1086

AN ACCOUNT

Of the conſtitutional Engliſh Polity of

CONGREGATIONAL COURTS:

And more particularly of the great annual Court of the People, called

The View of Frankpledge,

Wherein the whole Body of the Nation was arranged into regular *Diviſions* of

Tithings, Hundreds, &c.

The happy Effects of that excellent Inſtitution, in preventing *Robberies*, *Riots*, &c. whereby, in Law, it was juſtly deemed "*Summa et maxima Securitas.*" — That it would be equally beneficial to all other Nations and Countries, as well under *monarchical* as *republican* Eſtabliſhments; — and that, to the *Engliſh Nation* in particular, it would afford an effectual Means of *reforming the Corruption of Parliaments* by rendering the Repreſentation of the People *perfectly equal*, in exact numerical Proportion, to the total Number of *Houſeholders* throughout the whole Realm.

Intended as an Appendix to ſeveral Tracts on *National Defence*, &c.

The SECOND EDITION.

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13

MVSEVM
BRITAN
NICVM

THE Firſt Diviſion of this Kingdom into *Hundreds* and *Tithings* was ordained by the virtuous and patriotic King Alfred *, who is expreſsly ſaid to have therein followed the prudent Council given by Jethro to Moſes †, for

 the

* See Mr. Lambard's explication of words prefixed to his Archaionomia, on the word *Centuria*.

† The 1ſt Eſtabliſhment of this prudent advice of Jethro I have examined more at large in my Tract on "*the Law of Nature and Principles of Action in Man*," p. 325 to 329. Wherein I have ſhewn *the Right of the People* to ELECT Judges and Officers, Civil as well as Military, (Religious Officers and Miniſters excepted,) from the *Colonel*, or Captain, of a *Thouſand*, (who was alſo a *juſticiary*,) down to the Serjeant (Decurio) or Tithingman; (Deut. i. 9-17.) all which Officers were *elected* and *nominated* by the people before they were inveſted with Authority by Moſes. This *Right of the People* to ELECT *Judges* and *Officers* is clearly confirmed by a parallel Text in the ſame Book, Chap. xvi. 18.— "JUDGES *and* OFFICERS *ſhalt thou make thee in all thy* "*Gates, which the Lord thy God giveth thee, throughout* "*thy*

the more commodious Government of *the Iſraelitiſh Commonwealth*; it being, indeed,

"*thy Tribes, and they ſhall judge the People with juſt* "*Judgement.*" When this is rendered literally according to the Original, the *popular Right of Election* appears ſtill more manifeſt.——"*Judges and Officers* "*ſhalt thou give to thyſelf,*" (תתן לך) which could no otherwiſe be than by a *free Election* in all their Gates, (i. e. the Gates of their Cities, where the public Courts were anciently held,) for the *Judges and Officers* to each Tribe reſpectively.——Let us be truly thankful to God for the *Juſtice* of his Laws, and let us pray that we may have Grace to adopt them! As far as the nature of our political eſtabliſhments will legally permit, let us, for the Honour of *Human Nature*, imitate the *glorious State of Political Liberty* with which God was pleaſed to bleſs his people ISRAEL; and in which he would, moſt certainly, have maintained them, if they had perſevered in *the right Faith*, and in due obedience to *his Laws!* But, when men forſake GOD, they unavoidably loſe their LIBERTY! Let no man conceive that the *Rights of Election*, which I have proved by Scripture, were the Rights only of a *ſingle* Nation, the *People of Iſrael*; on the contrary, let us remember, that, as *all* Nations under the Chriſtian Diſpenſation, or rather *all* Nations that are really *Chriſtians*, are ſaid to be engrafted on the *Iſraelitiſh* Olive-Tree, and are thereby entitled to the *name* of ISRAEL, ſo they are undoubtedly entitled likewiſe to all the immunities and privileges of *redeemed Iſrael:* for, the only *people*, perhaps, that are *judicially* excluded from thoſe *national* Rights, are the *Branches* which

indeed, an Inſtitution thoroughly conſiſtent with the moſt *perfect ſtate of Liberty* that Human Nature is capable of enjoying,

which were *broken off from that good Olive-Tree for their unbelief*, i. e. the Jews themſelves, who are *broken off*, indeed, for a *time*, (a long *time*, alas, it has now been!) and are diſperſed or *ſtrewed* (like *Dead Branches* ſeparated from their proper Root) *amongſt all the nations of the Earth*; thus *univerſally* exhibiting, as it were, *a monumental Proof* of the Scripture Teſtimonies againſt that peculiar Nation!

But, under the Chriſtian Diſpenſation, there is not only the *ſame reaſon* for claiming to the *people* the Iſraelitiſh privilege of *electing all temporal* JUDGES and OFFICERS; but there are alſo unqueſtionable Proofs that the *elective Rights* of *Chriſtian People* are enlarged ſtill farther to the choice of all their *Spiritual Officers* and *Miniſters*; whereas, even in Iſrael, all *Spiritual Functions* were *hereditary* and not *elective*.

Thus are the *Elective Rights* of Chriſtian People exceedingly enlarged; and all perſons, who withhold or oppoſe theſe juſt *Rights*, ought to beware leſt they be found at laſt amongſt the Enemies of the *King of Righteouſneſs*; for it is remarkable that the *great apoſtacy*, ſo long foretold in the Chriſtian Church, could not *manifeſt itſelf in power* until the unwearied encroachments and uſurpations of *Popes*, *Emperors*, and *Kings*, had withdrawn from the *Church* (i. e. the *Congregation of Clergy and People* in each Country or Diſtrict) that *moſt eſſential Right* of all others, the ancient uſage of *electing their own Biſhops!* See a long Note on this Subject beginning at p. 331 of my Tract on the Law of Retribution.

enjoying, and yet competent, nevertheleſs, to fulfil all the neceſſary purpoſes of *mutual Defence, the due Execution of all juſt and equal Laws*, and *the ſure maintenance of the public peace*. "*Wonder-*
"*full Fruits of Utility would this one*
"*Counſel of Alfred (or rather of Jethro)*
"*produce to the Common-Wealth*" (ſays the loyal Mr. Lambard) "*if we would no*
"*longer uſe the ſhadow, but hold the ſub-*
"*ſtantial form, of the true Tithing**." In the Laws of King Edward the Confeſſor this mode of *national Defence*, by free popular Societies of Armed Citizens in every Diſtrict and Vicinage, is called "*Summa et maxima Securitas*," &c. †

"*the*

* "Mirabiles illud unum Aluredi (vel potius Je-
"thronis) concilium allaturum Reipublicæ utilitatis
"fructus, ſi *veræ Decuriæ* ſolidam teneremus imagi-
"nem, nec amplius umbra uteremur." Lambard on the word *Decuria*, or *Tithing*.

† Cap. 20. *De Fribergis*.

"Præterea eſt quædam *ſumma & maxima Securitas*
"per quam omnes *ſtatu firmiſſimo ſuſtinentur*, videlicet,

"ut

" *the Chief and greateſt Security by which*
" *all men are ſuſtained in the firmeſt State,*
" viz. that *every one*" (unuſquiſque)
" ſhould

" ut unuſquiſque ſtabiliat ſe ſub fideiuſſionis ſecuritate
" quam Angli vocant Freoborhges, ſoli tamen Ebora-
" cenſes dicunt eandem Tienmannatala, quod ſonat
" latine decem hominum numerum. *Hæc ſecuritas hoc*
" *modo fiebat, ſcilicet, quod de omnibus villis totius regni*
" *ſub decennali fideiuſſione debebant eſſe univerſi:* Ita quod
" ſi unus ex decem forisfecerit, *novem ad rectum eum*
" *haberent: quod ſi aufugeret, daretur lege terminus ei,*
" xxxi. dierum: queſitus interim, & inventus, ad juſ-
" titiam regis *adducretur. Et de ſuo illico reſtauraret*
" *damnum quod fecerat.* Et, ſi ad hoc FORISFACERET,
" de corpore ſuo iuſtitia fieret. Sed ſi infra predictum
" terminum inveniri non poſſet, quia in OMNI FRIBOR-
" GO *unus* erat *capitalis, quem vocabant, Friborgeſheofod,*
" ipſe capitalis ſumeret duos de melioribus SUI FRI-
" BORGI, et de tribus FRIBORGIS ſibi propinquioribus
" *acciperet de unoquoque capitalem & duos de melioribus*
" *uniuſcujuſque* FRIBORGI ſi poſſet habere, & ita ſe
" DUODECIMO EXISTENTE purgaret ſe & FRIBORGUM
" SUUM (ſi facere poſſet) de forisfacto & fuga ſupra-
" dicti malefactoris. Quod ſi facere non poſſet, *ipſe*
" *cum* FRIBORGO SUO damnum reſtauraret de proprio
" malefactoris quamdiu duraret, quo deficiente de ſuo
" & FRIBORGI SUI perficeret, & erga iuſtitiam emen-
" daret, ſecundum quod legaliter eis judicatum fuiſſet.
" Tandem vero ſacramentum quod non potuerunt *adim-*
" *plere per tres friborgos ſibi viciniores per ſe ipſos jurarent,*
" ſeſe nullatenus fore culpabiles, & ſi quando poſſent
" eum recuperare adducerent ad juſtitiam, aut juſtitiæ
" dicerent ubi eſſet."

" ſhould eſtabliſh *himſelf under the Se-*
" *curity of a Covenant*" (or Suretyſhip)
" which the Engliſh call *Freoborhges*,"
(i. e. *free-pledges,*) " but the Yorkſhire-
" men alone call *Tienmannatala*, which,
" expreſſed in the Latin Tongue, is *De-*
" *cem* Hominum numerum," (the number
of 10 Men.) " This Security was con-
" ſtituted in the following manner, viz.
" that ALL PERSONS" (UNIVERSI) " of
" all the Towns of the whole Kingdom
" ought to be under a *Decenal Surety-*
" *ſhip: ſo that if one of the Ten ſhould*
" FORFEIT" [viz. forfeit his *Free-*
pledge — i. e. his Credit in that little
Community as an *honeſt* and *legal* Mem-
ber of it, *probus* et *legalis*, (ſee Magna
Charta,) by which eſtimation alone his
Neighbours could ſo far confide in him
as to admit him into their *Tithing*,
and had a right to expect from him a re-
turn of *mutual ſecurity*] " *the nine ſhould*
" *have*

" *have him to*" (trial of) " RIGHT," (or indict him,) " *but, if he ſhould abſcond,* " *a term in Law of* 31 *Days ſhould be* " *allowed him: being ſought in the mean* " *while and found, he ſhould be brought* " *to the King's Judgement,*" (i. e. to " Judgement or Juſtice in the King's " Courts,) " *and there, out of his own*" (property,) " *ſhould make good whatever* " *damage he had done. And, if to this he* " *had forfeited,*" (or failed,) " Juſtice " ſhould be done of his body. But if, " within the aforeſaid term he could not " be found, the Chief, or Head, for in " every Freeborough" (or Tithing) " there was *one Chief whom they called* " *Freeborough Head,*" (Freoborges Heofod, i. e. Head-borough or Tithingman,) " *ſhould take* 2 *of the better ſort of people* " *of his Freeborough, and alſo, out of the* " 3 *neareſt Freeboroughs, he ſhould take* " *of each one Chief and* 2 *of the better*

 " *ſort*

" *ſort of people if he can have them*; and " ſo, the 12 being convened, he ſhall " clear himſelf and his Freeborough " (if he can do it) of the forfeiture and " *flight of the aforeſaid Malefactor.* " *Which if he could not do, he with his* " *Freeborough ſhould reſtore the loſs out of* " *the property of the malefactor as long* " *as any ſhould remain, failing which he* " *ſhould complete*" (the reſtitution) " *out* " *of his own and that of his Free-borough,* " and ſhould ſatisfy *Juſtice* according to " what ſhould be to them lawfully ad- " judged," &c. Thus, all the honeſt inhabitants of every vicinage, being anſwerable in their own private fortunes and property for all the damages and depredations of robbers, houſe-breakers, and other lawleſs ſons of violence, committed within their own reſpective diſtricts, would, of courſe, be ſtimulated, by the urgent ſpur of private intereſt,

to

to yield up a ſmall portion of their leiſure to the neceſſary *exerciſe of arms and training*, for their mutual defence againſt every act of violence and injuſtice; and on this ancient proviſion of the Common Law was apparently founded the *legality* of levying taxes on the inhabitants of London and Middleſex, to make good the *damages* occaſioned by the alarming riots in the year 1780. We ought, therefore, by no means to repine at the late judgement of the Courts, whereby the Riot-Tax, to make good the damages, was deemed legal, even before the Act was made for levying it; but, on the contrary, to promote, as much as poſſible, a ſtill more effectual and complete revival of that moſt excellent inſtitution of the *Common Law*, that it may be conſtantly and regularly enforced (even in leſs and more ordinary caſes of robbery, houſe-breaking, &c.) for the immediate recovery of all *damages*

and loſſes by any *act of violence* whatſoever: the value of the damages ſhould be levied on *ten houſekeepers* that are the neareſt inhabitants to the ſpot where the violence or robbery was committed: and, if the 10 *neareſt houſekeepers* ſhould not be able to make good the damage, then 10 *times* 10 *of the neareſt houſekeepers*, (or the hundred,) ought to be aſſeſſed (and ſo on, if neceſſary, to the whole county, for ſuch was the ancient uſage by the Common Law) for the damage; whereby all houſekeepers would be prompted by their own private intereſt to *aſſociate in arms* with their reſpective neighbours to ſuppreſs every act of unjuſt violence, and to maintain the public peace.

In the various accounts of theſe ancient Free-boroughs, or *Tithings*, they are ſometimes mentioned as conſiſting only of *Ten Men*; at other times, as conſiſting

ing of "*ten men and their families**:" and therefore, as all males, from 15 to 60 years of age, are required by law "*to have arms and to be duly exerciſed* "*therein*," (which in a former Tract I have already proved,) the number of males in a *Tithing* of the latter deſcription would amount to about *thirty*, (the proper number for a platoon,) if the average rate of 3 males to a family might be ſuppoſed a juſt eſtimation, including ſons, lodgers, apprentices, journeymen, porters, and ſervants; though this muſt vary in different neighbourhoods, according to the nature of the trades and occupations carried on therein, as ſome employ *many hands*, and others but very few.

Arch-

* —— "*They be commonly named* TITHINGS, *be-* "*cauſe they contain (as I told you) the number of* TENNE "MEN WITH THEIR FAMILIES." Lambard's Duties of Conſtables, p. 7. "*This frank-pledge*" (ſays Lord Coke) "*conſiſted* moſt commonly of *ten houſe-* "*holds*," &c. 2 Inſt. p. 73.

Archbiſhops, Biſhops, Earls, Barons, and other great men, having their own proper officers, Serjeants, Eſquires, Butlers, Confectioners, Bakers, &c. (ſee the 21 law of King Edward,) were ſuppoſed to have each a *Free-borough* within their own houſeholds, and were therefore not included in the ordinary *Tithings*—"*becauſe they were a ſufficient* "*aſſurance for themſelves and for their* "*menial ſervants*; no leſs than the ten "were, one for another, in *the ordinary* "*Dozeins.*"—See Cowell's Interpreter on the word *Friburgh*. This due exemption of the great men, from the obligation of entering into the ordinary *Decenaries*, I wiſh to be particularly noticed, becauſe it may prevent the oppoſition of ſome *high-minded* perſons, who would think themſelves degraded, perhaps, by an *univerſal* eſtabliſhment of the *Tithings*. On the quotation, laſt made from Dr. Cowell,

Cowell, it is neceſſary to remark, that the word *dozeins* is manifeſtly uſed for *decenus*, or *decenna*, and ſo alſo very frequently by other law-writers; but I cannot find that theſe *legal Societies*, or *Aſſociations* of neighbours, ever conſiſted of *dozeins* or *dozens*, in the ordinary ſenſe of that term, though they are ſo very frequently called *dozeins*, merely, I preſume, by corruption of ſpeech; ſo that the etymology of the Engliſh word *dozen* is not from *duodecim*, as one would naturally ſuppoſe from the modern application of the word, but from *decenna* and *dizaine*, the Latin and French appellations of the *Tithings*, which were regularly *Decenaries*, conſiſting of *ten men*; or rather *ten men* and their *families*, as I have before remarked. But, in the revival of *Decenaries*, which I wiſh to promote, the number of perſons in each *Free-borough, or Decenary*, (whether it

ſhall

ſhall conſiſt of *ten houſekeepers with their families and ſervants*, or only of *ten men*,) muſt be determined by the votes of the inhabitants themſelves in every neighbourhood, at their ſeveral *General Meetings*, *Folk-motes*, or *Ward-motes*; becauſe the ſervice muſt be perfectly voluntary; for, though the arrangement of the people into *decenary* companies was actually "*ordained by the ancient laws of* "*this realm*," and was (and, I truſt, ſtill is) required by the *common law* for the whole kingdom, yet one of the moſt eminent *common-law* writers of his time (Mr. Wm Lambard) mentions the formation of theſe *decenary* companies as being *the free act of the people themſelves* in every neighbourhood: for, according to him, the ancient uſage was, that "*all* "*free borne men ſhoulde* CAST THEM-"SELVES *into ſeveral companies by tenne* "*in eche companie*," &c. (Duties of Conſtables,

ſtables, &c. p. 7.) and our anceſtors could not have had any more urgent inducement, to render this ſervice voluntary, than what the preſent generation actually feels, viz. the neceſſity of ſelf-defence againſt *rioters*, *thieves*, *robbers*, and *houſe-breakers*; for, Mr. Lambard informs us, juſt before, in the ſame page, that "*it was ordained for the more ſure* "KEEPING OF THE PEACE, *and for the* "*better repreſſing of* THIEVES *and* ROB-"BERS, *that all free-born men ſhould* "CAST THEMSELVES *into ſeveral com-*"*panies*, &c." ſo that *the* REASON *of this law*, on which *the* FORCE of it ſhould depend, does not only *ſtill* ſubſiſt, but is certainly as forcible and urgent as ever it was. And, though this excellent cuſtom was become almoſt obſolete, through neglect and diſuſe, ſo long ago as the reign of *Queen Elizabeth*, yet, even then, it was ſtill conſidered as

a *legal* inſtitution, required by the *common law*; and the renewal of it was recommended as eaſy and moſt efficacious for the maintenance of the public peace: "whereof" (ſays the learned Lambard, ſpeaking of the ancient office of Borſholders, Tithingmen, &c.) "*there is* "*yet ſome ſhew or remnant in our* "LEETS, *or Law Days: but, if the* "VERY SUBSTANCE THEREOF WERE "*throughly performed,* [*as I know no let*" (ſays that learned man, and ſurely "*no* "*let*" has ſince been ordained) "*but that* "*by law it may,*] *then ſhould the peace of* "*the land be much better maintained.*" (Duties of Conſtables, &c. p. 9.) There is no doubt but the effects would be as happy and beneficial as when *the Tithings* were firſt eſtabliſhed by Alfred; for, all the old Hiſtorians agree, that an entire ſtop to *all robbery and violence* was immediately effected by this regulation.

In

In the Chronicon of John Brompton, we are informed, that, "although laws "in times of war are ſilent, yet King "Alfred, in the midſt of the claſhing "of arms, made laws, and inſtituted the "*Centuries*, which they call *Hundreds*, "and the *Decenaries*, which they call "*Trithings*," (he ſhould have ſaid *Tithings*,) "maintained peace amongſt "his own ſubjects, and chaſtiſed *rob-* "*bers* in ſuch ſort, that he commanded "golden bracelets to be hung up in the "roads, divided into 4 ways, which "might brave the avidity of paſſengers, "whilſt there was none who durſt "ſnatch them away *:" and Speed alſo

 tells

* See Twiſden's Hiſt. Anglicanæ Scriptores Antiqui, p. 818.

"Et licet inter arma Leges ſileant, ipſe tamen *Alu-* "*redus* Rex inter fremitus armorum Leges tulit, et "*Centurias* quas *Hundredas* dicunt, et *Decurias* quas "*Trithingas*" (plainly an error for *Tithingas*) "vocant "inſtituit, pacem inter ſuos cuſtodivit, et *latrones* in "tantum caſtigavit, quod in ſemitis quæ per quadri-

"vium

tells us, from William of Malmſbury, that "His kingdom hee" (Alfred) "likewiſe "divided into *Shires*, *Hundreds*, and *Ti-* "*things*, for the better ordering and ad- "miniſtring of Juſtice, and for the "abandoning of theeves, which had for- "merly increaſed *by the meanes*" (the very cauſe which at preſent exiſts) "*of long* "*warres*; whereby, notwithſtanding the "multitude of Souldiers continually im- "ploied, it is reported that a *Virgin* "might travaile alone in his daies, "through all his dominions, with- "out any violence offered; and that "bracelets of gold were hanged in the "high waies, and no man ſo hardy as "to take them away." P. 358.

The *ten* houſeholders or maſters of families, from whoſe preciſe number of *ten* the numerical appellations of *De-*

cenaries,

"vium finduntur, armillas aureas juſſit ſuſpendi, quæ "viantium aviditatem arriderent, dum non eſſent qui "eas arriperent."

cenaries, *Tithings*, and *Dozeins*, are manifeſtly derived, were themſelves alſo individually diſtinguiſhed, by the title of *Deciners*, from the youths, journeymen, lodgers, and ſervants, that were included, and reſpectively *pledged* by the *houſeholders* in the ſeveral *Decenaries*.

A right underſtanding and due application of the term *Deciner* being neceſſary, as I conceive, towards the promotion of a great national object at preſent, the neceſſary reformation of popular Repreſentation in Parliament; I hope my readers will not think it too tedious to attend a little to the inveſtigation of the word, that we may clear it from the indiſcriminate uſe which ſome law-writers have made of it. "*The Circuit* "*thereof*" (ſays Dr. Cowel in his Interpreter, ſpeaking of *frank-pledge*) "*was called* DECENNA, *becauſe it com-*"*monly conſiſted of* TEN HOUSEHOLDS: "*and*

" *and every particular perſon, thus mu-*
" *tually bound for himſelf and his*
" *neighbours, was called* DECENNIER," (more commonly, I believe, *Decener*, and afterwards by corruption *Dozener*,) " BECAUSE *he was of one* DECENNA or " *other*."—But this reaſon is not ſufficiently accurate.—The *youths, ſervants*, &c. were all " *of one* DECENNA *or* " *other*," yet they were not *Decenners*, though they were alſo mutually bound by oath for their good behaviour in their reſpective *Decenaries*; but thoſe men only were properly *Deciners*, who were more immediately reſponſible for all the reſt, by being the *maſters* of the ſeveral families, viz. only the TEN *houſeholders* in every TITHING, who paid ſcot and lot, and were anſwerable for the payment of all *national* as well as *provincial* and *parochial* burthens: theſe only were the men, who had a *judicial capacity*, and

and were called altogether by the chief *Freeborg*, or *Headborough*, on all occaſions to conſult and determine; on every queſtion, or extraordinary buſineſs, within the extent of their diviſion. All the individuals of the diviſion indeed were ſuitors in the *Tithing* Court, and might there be preſent, (as all courts were open,) and amenable thereto for offences; for the *Decenna* or *Tithing* Courts (however inſignificant ſo confined a juriſdiction as a *Tithing* may appear) were of admirable uſe in promoting *Juſtice*, and deciding differences and quarrels amongſt neighbours. The learned Author of the Notes on Forteſcue, (folio edit. in 1741,) p. 106. ſpeaking of "*the Court* "*of the Free-borough* or *Tithing*," adds, "*wherein*" (ſays he) "the *Tithing-man*, "or *Headborough*, was the JUDGE." And indeed they are intituled, in the laws of the Confeſſor, JUSTICIARII, JUSTICES; for,

for, ſuch was their juriſdiction and office within their *Tithing*. It is neceſſary, however, for the proper underſtanding of the chapter, wherein this is mentioned, to be previouſly informed, that the Latin noun, *Friborgus*, of the maſculine gender, does not properly ſignify a *Free-Borough*, *Tithing*, or Aſſociation of *ten men*, but rather one individual *Free-Borgeſs*, of that Society: but, when the Society or Aſſociation itſelf is to be collectively underſtood, the word is generally, though not always *, expreſſed in the neuter gender,—"*Fri-borgum*,"—as Dr. Cowel rightly expreſſes in his Interpreter, on the word, *Froborgh*, alias *Fridburgh*, &c.

It

* As there is an example at the latter end of this very law in queſtion, wherein *Friborgos* in all the copies is expreſſed inſtead of the accuſative plural of the neuter noun, *Friborga*, though the ſubject manifeſtly relates to three Friburgs, or Societies, and not to three individual *Freeburgeſſes*.

It is alſo manifeſt, by the explanation of titles given by the learned Lambard, that *nine perſons* of the Tithing were intituled FREOBORH *, that is *Free-Sureties*; "*whom we*" (ſays Mr. Lambard) "*call frank pledges:*" and that "*the tenth* "*man was called* TEOTHUNGMON," *that* is, "DECURIO," (or *Tithingman,*) and that "*others called him* TIENHEOFOD," (head of ten,) and "*others again Freoborhes-heofod,*" (Freeburgeſs-head,) or "*Chief-Pledge.*" A compariſon of theſe terms with the terms mentioned in the old laws of St. Edward, N° 20 and 32, and the relation theſe terms bear reſpectively to each other, will clearly

* "Atque hinc *novem illâ* quidem FREOBORH, id eſt, "ingenui fidejuſſores dicebantur, nos in titulis Cu-"riarum *Francos Plegios* appellamus *Decimus* ille "TEOTHUNGMON, id eſt *Decurio*, dictus eſt, quo no-"mine hac noſtra eſt tempeſtate occidentalibus Anglis "notiſſimus. Eum alii TIENHEOFOD, alii FREOBOR-"HES-HEOFOD, id eſt, vadem primarium et præcipuum "nuncupabant." Lambard on the word *Centuria*.

demonſtrate that the "*Juſtitiarios ſuper* "*quoſque decem Friborgos*," therein mentioned, were no other than *Tithingmen*, the *Heads*, or *Chiefs*, of each *Decenary*, who in Latin were called *Decani*, or *Deans*—and that the "*Decem-Fribor-* "*gos**," mentioned in that ſentence, do not ſignify—*ten Tithings*, or *Boroughs*, in their collective capacity, (which would amount to a *Hundred-Court*,) but only ten *individuals*, the *ten Houſeholders* or *Deceners* of the Tithing, each of whom Mr. Lambard calls "*Freeborh*," or Freeburgeſs. This being underſtood, we may ſafely proceed to ſpeak of the authority of the *Tithingmen* in their reſpective

* 32d Law of St. Edward. De *Centurionibus* et *capitalibus Friborgis*.

"Cum autem contingeret quod quidem ſtulti et im-
"probi gratis et nimis conſuete erga vicinos ſuos foris fa-
"cerent, cæperunt ſapientes ad invicem ſuper hoc ha-
"bere conſilium, et ſtatuerunt JUSTICIARIOS ſuper
"quoſque *decem Friborgos*, quos *Decanos* poſſumus
"appellare, Anglice vero *Tienheofod* dicti ſunt, i.
"*Decemvir*, caput de decem, &c."

ſpective diviſions.—*Theſe** " (according to the Saxon laws collected by King Edward the Confeſſor) " TRIED CAUSES " *among the villages and neighbours, and* " *according to conviction*" (or forfeiture on trial) " *took ſatisfaction,*" (or damages,) " *and ſettled agreements, concern-* " *ing paſtures, meadows, harveſts, as alſo* " *litigations between neighbours, and innu-* " *merable ſuch like diſputes, which infeſt* " *the weakneſs of human nature, and con-* " *tinually annoy it. But, when cauſes of*

 " *more*

* A continuation of the 32d Law of 1ſt Edward, beginning from the end of the laſt quotation of it.— " Iſti inter villas & vicinos cauſas tractabant, & ſe- " cundum forisfacturas emendationes capiebant, & con- " cordationes faciebant, videlicet, de paſcuis, pratis, " meſſibus, & de litigationibus inter vicinos, & innu- " merabilibus huiuſmodi decertationibus que humanam " fragilitatem infeſtant, & eam inceſſanter oppugnant. " Cum autem cauſæ majores erumpebant, referebantur " ad ſuperiores eorum juſticiarios quos ſupradicti ſa- " pientes ſuper eos conſtituerant, ſcilicet, ſuper decem " decanos, quos poſſumus dicere centuriones, vel cen- " tenarios, eo quod ſuper centum friborgos judica- " bant."

" *more conſequence occurred, they were re-*
" *ferred to their ſuperior* JUSTICIARIES,
" *whom the wiſe men*" (or national council) " *had appointed over them, that is, over*
" *ten Deans,* " (or *chiefs of tens,*)" *whom*
" *we may call*—CENTURIONS, or CEN-
" TENARII," (hundreders,) " *becauſe*
" *they had juriſdiction over* AN HUNDRED
" FRIBORGS," (i. e. an hundred Freeburgeſſes or *Deciners.*)

Thus, it is manifeſt, that the *Hundreders*, or *High Conſtables*, were alſo *Juſticiaries*; ſo that every *Hundred Houſeholders*, throughout the kingdom, had a complete eſtabliſhment of *Civil Officers*, (i. e. a High Conſtable and ten Conſtables, all of whom were *Juſticiaries* within their reſpective juriſdictions,) to preſerve the peace and ſettle differences amongſt themſelves and their reſpective families. And, though each or all of theſe officers ſat as *Judges*, or *Preſi-*

dents,

dents, in their reſpective courts, yet their power was duly limited by the opinion and determination of the *Houſeholders*, or *Deciners*, from whom the *Juries* (the real judges of the cauſes) were regularly choſen, and ſtill are, to this day, in moſt cities and trading towns, (as in London,) without regard to any other qualification than that of their being *houſekeepers* of the vicinage, indifferent to the parties, of unblameable character, and ſufficient ſubſtance, not to be ſuſpected of undue bias; or, as it is expreſſed in an old form,—"*ſuch as be* "*next neighbours, moſt ſufficient, and* "*leaſt ſuſpicious.*" And, in the act of 21 Edward I. there is an expreſs clauſe, reſerving the ancient rights of *Juries* to *cities* and *burghs*. And, Mr. Hawkins, on mentioning this and another ſtatute, (2 Weſt.) remarks thereupon—"*that* "*neither by common law, nor by theſe ſta-*

"*tutes,*

" *tutes, there was any neceſſity in proceed-*
" *ings before Juſtices in Eyre, &c. that*
" PETIT JURORS *ſhould be* FREEHOL-
" DERS; *and, if ſo,*" (ſays he,) "*it ſeems*
" *probable that there is no greater neceſ-*
" *ſity that* GRAND JURORS, *making*
" *an enquiry before them, ſhould be* FREE-
" HOLDERS; *and, if a* GRAND JUROR
" *before ſuch Juſtices need* NOT *be a*
" FREEHOLDER, *why ſhould there be a*
" *greater neceſſity that a* GRAND JUROR
" *before other Juſtices ſhould be a* FREE-
" HOLDER?" &c. Pleas of the Crown 2d book, chap. 25. p. 217. And he repeats this doctrine in chap. 43. ſect. 12. " *That, at the common law, there*
" *was no neceſſity that* JURORS *ſhould*
" *have* ANY FREEHOLD, *as to inqueſts*
" *before Juſtices in Eyre, or in cities or*
" *burghs,*" &c. whereby the *judicial* capacity of the Houſekeepers, or *Deciners*, without any qualification as *Land-*

holders,

holders, is, I truſt, ſufficiently eſtabliſhed. We are miſled alſo in the ſenſe of the word *Deciner*, when it is applied (as by the learned Cowell) in a peculiar manner to the chief, or head, of a *Tithing*.—"*It* "*ſignifieth*," (ſays he,) "*in the ancient* "*monuments of the law, ſuch as were* "*wont to have the overſight and check of* "TEN FRIBOURGS *for the maintenance* "*of the King's peace.*" But the *Chief* of the ten, as I have already ſhewn, had his proper titles of *Headborough* and *Tithingman*; and, though each chief was always a *Deciner*, as being himſelf *one* of the *ten* incorporated *houſeholders*, yet he had no peculiar title of *Deciner*, any otherwiſe than being *the Chief* of the *Deciners* in his diviſion. The youths, and others, that were not *houſeholders*, were pledged by the *Deciners*, as appears by Briton, cap. 12.—"Volons nous que treſtous "ceux de xiv ans deſouthe nous facent

"le

" le ſerement, &c.—et velons que toutz " ſoient en *Dizeyne*, et pleuys par *Deſ-* " *cyners*, ſauve gentz de religion, clers " et chevaliers, et leur fitz eynes, et " femes."—" *We will, that all thoſe* " *which are fourteen years old ſhall make* " *oath to us*, &c. *and that all ſhall be in* " TITHINGS, *and pledged by Deciners*," &c. The law could not mean that *all* ſhould be pledged by the reſpective Headboroughs alone, but, certainly, by the TEN *houſeholders* of each *Decenary*. And Dr. Cowell himſelf alſo, in the latter part of that article, ſays,—" *that* DECENNIER " *is not now uſed for the chief man of a* " DOZEN, *but for him that is ſworne to* " *the King's peace*;" neither in this is he ſufficiently accurate; for, the being *ſworn to the King's peace* did not conſtitute a *Deciner*, in the proper ſenſe of the word, though it included the perſon ſworn in the juriſdiction of a *Decenary*.

The

The title of *Deciner* could not properly belong to any but the *ten* houſeholders themſelves, from whoſe *number* his diviſion was formerly called *Tienmantale*, id eſt, (ſays Mr. Lambard,) "*Decem-*
"*virale collegium*" a *ſociety of ten men.* *Nine* of theſe, as Mr. Lambard declares, were called *Freoborh, (Free Burgeſs,)* i.e. *free pledges,* and the tenth was called Teothungmon, (Tithingman,) i.e. *Decurio.* Now, it ſeems the office and title of *Decurio* were uſed in Britain, long before the Saxon Kings, by the Romans, as well in their *civil* as their *military* eſtabliſhments: and the learned author of the notes on the folio edition of Forteſcue's excellent tract, *de Laudibus Legum Angliæ,* obſerves in p. 31.—"*that*
"*the* ROMANS *had their laws, in ſuch*
"*parts of this land, as they had their*
"*moſt civil government in; I mean,*" (ſays he,) "*in colonies hither deduced.*

" *For, every colony was but an image of*
" *the mother city, with like holy rites,*
" *like courts, laws, &c. and for the moſt*
" *part with* DUUMVIRI *inſtead of*
" *Conſuls, and* ÆDILES *and* DECU-
" RIONES *in lieu of a Senate: and it is*
" *clear*" (ſays he) " *that divers colonies*
" *from Rome were in Britain, as at Ca-*
" *melodunum, now Malden in Eſſex,* &c."

The conſideration of this circumſtance enables us to propoſe a much more probable etymology of the Engliſh word *Denizen* than what is generally aſſigned. Lord Coke ſuppoſes it from " *deins*
" *nee, born within*;" and alſo from *Donaiſon*, " becauſe the freedom *is given*
" *by the King*." But a learned writer (Davies) aſſerts, that " *Denizen is a*
" *Britiſh law term, which the Saxons*
" *and Angles found here and retained*." It could not, therefore, be derived from the

the *French* tongue before that modern language was known or even formed.

Neither is the *Welch* etymology of it at all ſatisfactory, becauſe it ſeems very uncouth, and not ſufficiently ſimilar in ſound to the word. But, if we derive the word immediately from the *Latin*, it will appear moſt natural and eaſy, both in *ſound* and *ſenſe*; for, the word *Deni*, being derived *à Decem pro Deceni*, is a proper adjective expreſſive of its relation to the number of *ten* perſons in a *Decenary*; and, as the Romans had their *Decuriones* and conſequently *Decenaries* alſo, a proper *Latin* verb, to expreſs the initiation, or introduction, of a perſon to the privileges and franchiſes of a *Decenary*, is very naturally formed from the word *Deni*, viz. *Denizo*; which verb and its derivatives are frequently uſed by our law-writers, when they ſpeak of the admiſſion of *Aliens* to the franchiſes

of the native inhabitants; and, the ſaid *franchiſes* being maintained in ancient times by mutual *frank-pledge* in the ſeveral *Decenaries*, it is obvious, that the participle "*Denizatus*," which frequently occurs, and the derived noun-ſubſtantive "*Denizatio*," are applied in ſuch caſes in their proper *Latin* ſenſe; though the law-writers, who uſed them, have overlooked that moſt obvious etymology, which is confirmed by the *ſound* as well as the true *Latin ſenſe* of thoſe terms.

Lord Coke ſays, "*Denizen* is taken for "an alien born, that is *infranchiſed*, or "DENIZATED, by Letters Patent, where-"by the King doth grant unto him, that in "all things he ſhould be reputed, eſteem-"ed, held, and governed, as our liege ſub-"ject, ſprung up" (from his anceſtors) "within our ſaid kingdom of England, and "not otherwiſe, nor in any other manner." And he cites Dier, in the ſame page, 1 Inſt. lib. 2. p. 129. reſpecting this

ligeance

ligeance of *Denizens*, "Ligentia Domino "Regi debita, &c. Data (eſt) aut per "*denizationem*, aut *per naturaliza-* "*tionem*."—When foreigners, therefore, were admitted to the privileges and franchiſes of Engliſhmen, they became the King's *liege* ſubjects,—"*eſſe ad fidem* "*Regi Angliæ*," and were of courſe *denizated*, or admitted to be members of ſome *Decenary*, and would be ſworn to their ligeance in common with other ſubjects in the court of *frank-pledge*; and, if the *denizated* ſtranger rented a houſe, and payed ſcot and lot, and other rates, he became a *Frioborh*, or *Freeburgeſs*, having a right to vote for Repreſentatives in *the national Council:* ſo that Lord Coke was certainly right in uſing the terms *infranchiſed* and *denizatus* as ſynonymous: for, the "*renting of a houſe*, "*at a certain rent by the year*," is the ancient legal deſcription of *burgage-*

tenure.

tenure. "*It is called* BURGH," (ſays Sir Edward Coke,) "*becauſe it ſendeth* "BURGESSES *to Parliament.*" And, though this is not the proper derivation of the word, it is certainly the *uſage* of *boroughs*, and as well as the *right of all Burgeſſes.*

"*They that have tenements*" (ſays Littleton) "*within the Burrough (or* "*Burgh) hold of the King their tenements,* "*and every tenant for his tenement ought* "*to pay to the King* A CERTAIN RENT BY "THE YEAR."—1 Inſt. lib. 2. c. 10. ſect. 162. The next ſection declares the ſame doctrine, concerning thoſe who *rent* of any other Lord. "*And the* "*ſame manner is, where another Lord,* "*ſpiritual or temporal, is Lord of ſuch* "*a* BURROUGH, *and the* TENANTS OF "THE TENEMENTS, *in ſuch a Borough,* "*hold of their Lord,* TO PAY EACH OF "THEM YEARLY AN ANNUAL "RENT."

" RENT." Sect. 163. " *And it is called* " TENURE IN BURGAGE," (ſays Littleton,) " *for that the tenements within* " *the Burrough be* HOLDEN OF THE " LORD OF THE BURROUGH BY CERTAINE RENT, &c. *And it is, to* " *wit, that the ancient townes, called* " BURROUGHES, BE THE MOST ANCIENT TOWNES THAT BE IN ENGLAND; *for the townes, that now be* " CITIES OF COUNTIES, *in old time were* " BOROUGHES, and *called* BOROUGHES; " *for, of ſuch old townes, called* BOROUGHES, CAME THE BURGESSES " OF THE PARLIAMENT, *when the* " *King hath ſummoned his Parliament.*" Sect. 164.

Now, this deſcription of paying " *an* " *annual rent*," or " *holding tenements by* " *certain rent by the year*," is the proper diſtinction of a tenant *in Burgage* from a *tenant at will*, becauſe the latter

" *hath*

"*hath no certain nor ſure eſtate,*" (ſays Littleton,) "*for, the Leſſor may put him out* "*at what time it pleaſeth him.*" Lib. 1. c. viii. §. 68. But very different is the caſe of *tenants for years*, (as Littleton remarks in the ſame chapter *,) and thoſe perſons who agree with the owners of their houſes at a *certain rent*, howſoever ſmall, for any *fixed time*, if it be but for *half a year*, or even for a *quarter of a year*, are nevertheleſs to be eſteemed in law as "*tenants* "*for years*," ("quod tenent ad terminum "annorum." Lib. 1. C. 7. Sect. 67.) For, they enjoy a free and *certain* poſſeſſion to the end of the *agreed term*, ſo that their *tenure is perfectly free*; and they have ſometimes been intituled "*Liberi Tenentes*," and *Freeholders*, in contradiſtinction to *tenants in villanage*, though they are indeed *freeholders* in a very

* "*Otherwiſe it is if tenant for yeares, which knoweth* "*the end of his terme, doth ſowe the land*, &c." Ibid.

very different ſenſe from the common acceptation of the term *freeholder*, now applied only to thoſe who are properly *land-owners*; which would therefore be a leſs equivocal title for them; the others being alſo *freeholders*, or *free tenants*, though in a leſs durable *tenure*. But, their ancient indiſputable RIGHT, of *ſending Burgeſſes to Parliament*, proves their *freedom*, as members of the community. In the *Borough* of Southwark, and many others to this day, *the renters* of tenements, or *houſekeepers in general*, paying ſcot and lot, are the Electors of the Deputies to Parliament; ſo that the doctrine is unqueſtionable. And, in the City of Weſtminſter, and ſeveral other ancient cities, the ſame RIGHT, by *burgage-tenure*, of voting for Repreſentatives, prevails to this day; becauſe, *all Cities* were originally deemed *Boroughs*, as being the habitations of *freo-borges*, or

free pledges, i. e. the aſſociated *houſe-holders*, who were mutually *pledged* to maintain the public peace, and defend and ſupport the due execution of the laws: and, if the right of voting were fully reſtored, throughout the kingdom, to all *houſeholders*, or *maſters of families*, who principally ſupport the burthens of the ſtate, even if the franchiſe ſhould deſcend no lower, it would be amply ſufficient, I truſt, to deſtroy the preſent deplorable corruption in the repreſentation, or rather the *miſ-repreſentation*, of the Commons, and to reſtore the ancient dignity and freedom of Parliament; eſpecially if all the ſaid *houſeholders* were duly incorporated as *Deciners*, or *Free-Borhes*, in their reſpective neighbourhoods.

For then the number of *Deciners* or *Free-holders* in each county would be regularly known, howſoever much the numbers

of

of other males in the ſeveral *Tithings* might vary; and the advantage of this *regularity of numbers* would not only be the effecting a proportionable *regularity of manners*, but it would alſo greatly facilitate the much wiſhed-for meaſure of a *more equal repreſentation of the people*; nay, the repreſentation may be made not only *more equal*, but *moſt equal*, or *perfectly equal*, if all *Deciners* in each county were allowed to vote, as unqueſtionably, in juſtice and conſtitutional right, they ought to do: for, the junction of ten *equal* hundreds of *Deciners* into one aſſociated body would form the court of the *thouſand*, well known in the Iſraelitiſh commonwealth; which, conſidered as a proportionable *diviſion* of a county, perfectly regular in numerical order, both of Officers and other *Deciners*, would much facilitate the conducting and ordering of public buſineſs.

And *two* ſuch diviſions, of *a thouſand Deciners each*, would be a proper number to ſend *one Deputy* to Parliament, according to the preſent population of the kingdom, ſo as not to exceed, but rather diminiſh, the preſent number of repreſentatives. Thus, a *moſt equal repreſentation of all the families in the kingdom* would be obtained; and *two thouſand* families (one with another) might well afford to pay ample wages to *one* Repreſentative; and the ſtipend might be very eaſily collected, if the *Decenaries* were duly formed and eſtabliſhed, and the ſeveral courts, which regularly ariſe from the *Decenaries*, viz. the *Hundred* Courts, and alſo the Courts of *one Thouſand* families each, above propoſed; and, laſtly, the junction of *two* ſuch *Courts of the Thouſand*, for the election of *one* Repreſentative in the great Common Council of the Realm. The people, of whatever

parties,

parties, or ſeparate intereſts, might go up altogether with their ſeparate *Tithings*, or by their *Hundreds*, to the Poll-Books, (in like manner as the ancient Romans voted by their *Centuries*,) by which means *order* would be preſerved, and no perſons would be permitted to vote, but thoſe that were known to *dwell* and *reſide* in the place, or county, where the election is made, according to an ancient rule of the conſtitution; "*eligantur in quolibet* "*comitatu per homines in eodem comitatu* "*commorantes et reſidentes*:" See my Tract on *Equitable Repreſentation*, &c. p. 26 and 27; and alſo an Act of Parliament there quoted, which is ſtill in force, 1 Hen. V. c. 1. It is therefore an act of groſs corruption, utterly repugnant to the ancient conſtitution of the kingdom, to bear *the travelling charges of voters* who dwell in diſtant places; for ſuch ought not to be permitted

ted to vote at all, except on the ſpot where they reſide, by which not only *much expence* would be ſaved to the Candidates, but alſo much immorality, debauchery, and tumult, againſt the public peace at elections *, would be prevented.

The

* Extract, reſpecting *Bribery at Elections*, from "A "Repreſentation of the Injuſtice and dangerous Ten- "dency of *tolerating Slavery* in England." Printed in 1769. P. 16 to 18.

"But how is he" (a Negro claimed by a *Slaveholder* as private property) "to be diveſted of his *human nature?* or of his juſt right to the King's protection?

"A man may, indeed, be ſaid to be diveſted of his *humanity*, 1ſt, in a moral ſenſe, by his own action, in ſtooping to any kind of baſeneſs beneath the dignity of a *man*. And, 2dly, by the execution of the laws, in puniſhment of ſome particular kinds of baſeneſs, for which a man may *lawfully* be diveſted of his humanity by a *civil death:* that is, may be "*diſabled to hold* "*any office or franchiſe*, &c." "*as if ſuch perſon was* "*naturally dead.*" This is one of the penalties expreſſed in a Statute (2 Geo. II. ch. 24.) againſt bribery and corruption in Parliamentary Elections, whereby, not leſs the *Briber* than the *Bribed* (whether the offence be committed "*by himſelf or any perſon employed* "*by him*") is ſubjected to the diveſture abovementioned. But the vileſt and moſt ignorant Negro Slaves

are

The number of houſes in England and Wales, in the year 1777, fell ſhort of a million,

are not ſo *inhumanly* baſe and degenerate as theſe Time-ſervers, who offend againſt God! the King! their friends and fellow-ſubjects! themſelves! and all their unhappy poſterity, even the children that are unborn! They are enemies to the State, infinitely more to be dreaded than the moſt puiſſant foreign power at open war!

" No ſhuffling arts or equivocations whatſoever can lighten this monſtrous load of guilt, for which the offenders muſt *one day* moſt certainly be called to account, notwithſtanding that they may have eſcaped the penalties of this Engliſh Statute: for, indeed, it is merely the penalties (or execution) of the ſaid Statute which they eſcape, and not the guilt of breaking it, becauſe the ſame is ſo warily drawn up, that there is not the leaſt room for mental reſervation.

" A very large proportion of the freeholders in this kingdom, it is to be feared, are involved in this horrid guilt! Nay every elector who hath but even EATEN or DRUNKEN at the expence of another, during the time of an election, is likewiſe in ſome meaſure guilty! (though charity will incline us to ſuppoſe that their offence is, for the moſt part, occaſioned by ignorance rather than wilful corruption;) for, not only money, but alſo any " Gift, Office, Employment, or OTHER REWARD " WHATSOEVER," is forbid by the ſaid Act. Now this prohibition muſt neceſſarily include *meat* and *drink*, ſince theſe articles cannot be conſidered below the eſtimation

million, as the reader may ſee by a much better authority than mine is, that of

mation of a "REWARD," becauſe they are expreſsly prohibited by a preceding Act ſtill in force, (viz. 7 W. III. ch. 4.) whereby thoſe Candidates, who ſhall "*directly* or *indirectly* give, preſent, or allow, to any perſon or perſons, having voice or vote in ſuch election, any money, MEAT, DRINK, ENTERTAINMENT, or PROVISION, &c. are rendered incapable (though elected) *to act, ſit, or have any vote or place, in parliament*, &c." Happy would it be for England, if this ſalutary law could be ſtrictly enforced! Bribes in money, places, &c. are not productive of half ſo much evil as the debaucheries of *election entertainments*, becauſe the pernicious effects of the latter are ſo permanent, that they may fairly be ſaid to be tranſmitted from *election* to *election*. The groſs immorality, as well as the deplorable idleneſs and poverty, (all forerunners of ſlavery,) which too much prevail in many parts of this kingdom ought (I ſincerely believe) to be principally attributed to the unlawful practice of *opening houſes for public entertainment at elections:* and we cannot hope that this dangerous evil will ever be corrected, unleſs the wiſdom of the legiſlature ſhall hereafter think fit to oblige every candidate (as ſoon as he declares himſelf ſuch) to promiſe, upon oath, that he will ſtrictly obſerve every article of the laſt-mentioned Act againſt treating electors. This long digreſſion, from the ſubject of Negro Slaves, the author hopes may be pardoned, eſpecially if the reader will be pleaſed to conſider, that civil

of the very able and ingenious calculator Dr. Price*. But, for the ſake of a round number, "*Let it, however,*" ſays Dr. Price, "*be ſtated at a million,*" (p. 14.) The number of *Deciners*, or *Houſeholders*, we may, therefore, alſo ſtate at *one million*: for the character of *Houſeholder*, without farther *diſtinction*, happily includes all perſons of every *rank* and *de-*

G *nomination*

vil and political Slavery, as well as Slavery to ſenſual appetites, are ſo very nearly connected with each other, in their nature and effects, that it is no very conſiderable tranſition from the preſent point to ſpeak of them together. But the caſe of this poor Negro is very different. If he is a Slave, yet it was not with his own conſent that he was made ſo. He neither *ſold himſelf*, nor has he *betrayed others*, and cannot therefore be liable to ſuch ſevere penalties. He has not been guilty of any offences, that I know of, for which he might *lawfully* (like corrupt and venal voters who accept of money, meat, or drink, at elections) *be diveſted of his humanity*; and therefore it muſt certainly be allowed, that he differs from a horſe or a dog in this very *eſſential point*, viz. *his humanity.*"

* See—Obſervations on the Population of England and Wales, p. 11. "Total of houſes charged, chargeable, and excuſed. In 1761, 980,692.——In 1777, "952,734."

nomination that ought, in *ſtrict juſtice*, and ancient preſcription of conſtitutional *right*, to elect and ſend their own Repreſentatives to Parliament, whether as *Knights*, *Citizens*, or *Burgeſſes*.

The million of *Houſeholders* would form exactly ONE THOUSAND diviſions of *one thouſand Houſeholders* each, viz. 1000 *Courts of the Thouſand*, which I have before recommended from ancient example: and the junction of two ſuch *Courts of the Thouſand*, for the election of *one* Member of Parliament, as before propoſed, would form 500 Courts of *two thouſand Houſeholders* each, which would elect *five hundred Repreſentatives* for South Britain; a proportion ſufficiently near to the number 513, at preſent elected for that part of the kingdom; becauſe a reduction in number, would, perhaps, be more beneficial than otherwiſe; for, certain it is, that the ancient

cient Parliaments were not near ſo numerous as at preſent, even without reckoning the Deputies from North Britain.

This Plan would indeed occaſion ſome variation in modes and forms, but no real *innovation* with reſpect to the national conſtitution; becauſe the *right of election* would ſtill be veſted where it ought, viz. in ALL *the free Houſeholders*, or Freo-borges, of ALL *the counties*; and that in the moſt *perfect proportion of equality* that can be deſired; which ought ſurely to recommend the propoſal, if *equal repreſentation* is at all a worthy object,—if *juſtice* and *right* are to be preferred to their oppoſite extremes, *in-equity*, or iniquity, and *tort*, which have too long prevailed;—or, laſtly, if we have honeſty or humanity enough left amongſt us, in the fear of God, to *reject the evil and chooſe the good*, i. e. to ex-

erciſe that only faculty, which materially diſtinguiſhes men from brutes!

Should we ever be ſo happy as to ſee the true diviſions of *Tithings* and *Hundreds* re-eſtabliſhed in this realm, and the juſt reformation of Parliament (as here propoſed to be effected by them) actually take place by the eſtabliſhment of *equal repreſentation*, numerically exact, (which it really may be, if we have but *common honeſty* enough amongſt us to *deſire* and *promote* it,) there will be an admirable harmony in the ſeveral gradations and proportions of public officers, or magiſtrates, over the *Commons of England and Wales*, according to the preſent ſuppoſed ſtate of population: viz.

Deciners or *Houſeholders*, paying ſcot and lot, and mutually pledging each other and their reſpective *families* and ſervants to the common peace

peace and common defence - - - - - - 1,000,000

Tithingmen, or *Captains of Tens*, the elected heads of every ten Deciners, being *Conſtables* by the common law - 100,000

Hundreders, the elected chiefs of every ten Tithings, being *High-Conſtables*, and *Juſticiaries*, or *Juſtices*, by the common law - - - 10,000

Chiliarchs, or *Colonels*, the elected *Chiefs of Thouſands*, being not only *Civil Magiſtrates*, or *Juſtices*, but alſo the King's military Lieutenants in their diſtricts - - 1,000

Senators, or *Repreſentatives*, in Parliament elected "*every* "*year once, and more often if* "*need be*," in 500 courts of 2000 Deciners each - - 500

But,

But, the facility of *equalizing*, and thereby *reforming*, *the representation of the people* in the great national Council, is not the only benefit that might be obtained by restoring the ancient mode of government by *Tithings*, *Hundreds*, &c.

In all these various divisions of the people, regular courts were anciently held for the maintenance of *peace* and *right*, and for adjusting all differences amongst neighbours, *without expence*; for, there was no cause or contest of such magnitude and importance, for which a popular court of proportionable dignity could not be found in the larger divisions of Wappentakes, Trithings, and Shires, to adjust and determine it; whereby tedious and vexatious lawsuits, and the ruinous expences attending them, were happily avoided. In like manner, *the general Assemblies*, or *Congregations*, held

held in the gates of the Iſraelites, while under the theocracy, were eſteemed *courts for juſtice and judgement*; wherein preſided *Judges and Officers, that were freely elected* by the inhabitants of each city or diſtrict, as I have elſewhere ſhewn (ſee p. 3-5.); and the ſame reaſonable mode of ſettling private differences, by the *Congregation*, (or Church,) was not unknown, even among Heathen Nations. The people of Epheſus, it ſeems, retained this ſalutary conſtitution of popular liberty, even when under the yoke of the Roman *Beaſt*: and had a power of holding popular aſſemblies, (called *Eccleſia*, or Church,) for reſolving difficult queſtions and diſputes between individuals, beſides the ordinary Courts of juſtice, under the *Roman Deputies*, for common offences. This appears by the ſpeech of the Town Clerk

of

of Epheſus, (recorded in Acts xix. 37–39.) who, after he had appeaſed the tumult and confuſion of the people, that had haſtily run together, without notice or ſummons to ſpecify the cauſe of aſſembling; he ſaid—"*Ye have brought hither* "*theſe men,*" (meaning two of Paul's companions whom they had ſeized,) "*which are neither robbers of Churches,* "*nor yet blaſphemers of your Goddeſs.* "*Wherefore, if Demetrius, and the craftſ-* "*men which are with him, have a matter* "*againſt any man,* THE LAW IS OPEN," (or rather—the court-days are held,) "*and* "*there are* DEPUTIES: *let them implead* "*one another. But, if ye enquire any thing* "*concerning* OTHER MATTERS, *it ſhall* "*be determined in a* LAWFUL ASSEMBLY," εν τη εννομω εκκλησια, in a lawful *Eccleſia*, i.e. in a *congregation convocated*, or called together, in due form and order, by

by the proper officers; this having been neglected in the then laſt haſty and tumultuous aſſembling of the people, which occaſioned the Epheſian Town-Clerk's harangue. So perfectly unexceptionable is this mode of determining private quarrels and conteſts, without expence, by a *popular aſſembly*, that it ſeems clearly to be pointed out *for the practice of Chriſtians*, in the commands even of OUR LORD HIMSELF, on the caſe of a treſpaſſing brother, Mat. xviii. 15–17. "*Go* "*and tell him his fault*" (ſaid our Lord) "*between thee and him alone: if he ſhall* "*hear thee, thou haſt gained thy brother.* "*But, if he will not hear, take with thee* "*one or two more*, &c.—"*And, if he ſhall* "*neglect to hear them*,—ειπε τη εκκλεσια, "*tell unto* THE CHURCH," (not unto the *Prelate of the Church*, as Popiſh writers contend, therein groſsly pervert-

ing* the divine command by their vain traditions,) but, τῃ ἐκκλησιᾳ, "*unto the congregation*," including the Laity as well as Clergy. And the Apoſtle Paul reproved the Corinthians, for carrying their conteſts about worldly matters (βιωτικα, things pertaining to this life) before the *eſtabliſhed imperial Courts of Juſtice, where unbelievers preſided*; which conteſts ought to have been judged amongſt themſelves by the *Congregation of Chriſtian Brethren*, (1 Cor. vi. 1–6.)

But,

* So deluded and unguarded has the Roman Church been in her *apoſtacy*, that a very learned Jeſuit, Cornelius à Lapide, was not aſhamed to ſuppoſe "*various* "*cauſes wherein this order*" of redreſs, commanded in this text, "*might be omitted, or* INVERTED;" (he might as well have ſaid at once PERVERTED:)—"*Porrò varias* "*ob cauſas* HIC ORDO OMITTI *vel* INVERTI *poteſt, ac ſu-* "*binde debet, ut is, qui peccavit, ſtatim deferatur* AD SU- "PERIOREM," &c. which being no part of the *order* enjoined by Chriſt, is a manifeſt PERVERSION of the command, a glaring attempt to *render the word of God of none effect, by vain traditions*, for which he had no better authority than a bare reference to ſome of his own order, one *Salmeron*, &c.

But, after *the general eſtabliſhment of Chriſtianity*, in this or any other nation, the ſeveral popular Courts of the *Tithings*, or *Hundreds*, or *Thouſands*, or *Counties*, duly convened, are the proper *Congregations of Chriſtian Brethren* for every neighbourhood: and, in ancient times all thoſe courts, where the ſheriffs held their *Tourns*, (or *rotulary* viſitations, took cognizance not only of Ϛιωτικα, *worldly matters*, but alſo more eſpecially of *Eccleſiaſtical Caſes*, as being the FIRST * or moſt important objects of their attention: for, thus the order of caſes, falling under their cognizance, is ſtated (as Lord Coke informs us, 4 Inſt. p. 259 and 260) in "*the Red-*" *Book, inter Leges* H.I. cap. 8. *de gene-*" *ralibus placitis comitatuum, i. e.*" (ſays

H 2 he,)

* Agantur itaque PRIMO *debita veræ Chriſtianitatis* " *Jura: Secundo* Regis placita: POSTREMO cauſæ ſin-" gulorum dignis ſatisfactionibus expleantur." 4 Inſt. p. 260.

he,) "*as well of the* TOURN" (before-mentioned) "*as of the County Courts,*" viz.

"*Let the due laws of true Chriſtianity* "*be* FIRST *diſcuſſed*; ſecondly, the pleas "of the King; laſtly, let the cauſes of "individuals be diſpatched with ſuita-"ble redreſs," (or "ſatisfactions.")

The *Biſhops**, as well as the Earls, Lord-Lieutenants, Sheriffs, *Hundreders*, Aldermen,

* Sir Edward Coke, by a citation from the Red Book in the cuſtody of the King's Remembrancer, compoſed in the time of Henry I. proves that the *Biſhops* were then required to be preſent in popular courts of common law. He refers us to the 8th chap. "*de generalibus placitis* "*comitatuum,*" which he interprets "*as well of the tourn* "*as of the county court.* Sicut antiqua fuerit inſtitutione "firmatum, ſalutari Regis imperio, vera nuper eſt re-"cordantione firmatum, GENERALIA COMITATUUM "PLACITA *certis locis, et vicibus et definito tempore per* "ſingulas Angliæ provincias convenire debere, nec "ullis ultra fatigationibus agitari, niſi propria Regis "neceſſitas, vel commune Regni commodum ſæpius ad-"jiciant. INTERSINT *autem* EPISCOPI, comites, vi-"cedomini, Vicarii, *Centenarii*, Aldermanni, Præfecti, "Præpoſiti, Barones, Vavaſores, Tungrevii," (Re-corders of towns,) "et cæteri terrarum Domini, dili-"genter

Aldermen, Mayors, Magiſtrates, &c. preſided in theſe ancient *Courts of the Congregation*, whereby they were enabled to enforce the ſaid "*due laws of true* "*Chriſtianity*," againſt all offenders, (whether *Clergy* or *Laity*,) through the united *power of the Congregation*, which regularly aſſembled at certain fixed *places*, and at ſtated

"genter intendentes ne malorum impunitas aut gra-"vionum pravitas," (*the corruption of Magiſtrates*, more particularly of the *Judges of the Exchequer*, who were *Graviones*,) "vel judicum ſubverſio ſolita miſeros lace-"ratione confiniant. *Agantur itaque* PRIMO *debita* "*veræ Chriſtianitatis jura*; SECUNDO *Regis placita*; "POSTREMO *cauſæ ſingulorum dignis ſatisfactionibus ex-*"*pleantur*."—"Whereupon they conclude," (ſays Sir E. Coke,) "THAT ECCLESIASTICAL CAUSES were "handled in the *tourn*, in the reign of Henry I. LONG "AFTER *the ſaid ſuppoſed charter*." (A charter to extend the tyrannical papal authority, which was not enrolled till "*the ſecond Richard II. being never heard of before*," though pretended, by the forgers of it, to have been granted by William the Conqueror.) "*And certain it* "*is*," (continues Sir E. Coke,) "*that the Biſhops Con-*"*ſiſtories were erected, and the cauſes eccleſiaſtical removed* "*from the* TOURN to the Conſiſtory, AFTER *the* making "of the ſaid Red Book: Ideo penes lectorem ſit judi-"cium." 4 Inſt. c. 53. p. 200.

ſtated *times**; the united power of *many* being ſufficiently effectual to reſiſt and humble the moſt audacious *individuals*, howſoever great and opulent: whereas, at preſent, the moſt bare-faced enormities of *immorality* and *irreligion* are beyond the reach of *eccleſiaſtical* correction: the *epiſcopal Authority* (and more eſpecially that which ought to reſtrain the *Laity*) being reduced almoſt to nothing, through the fallacious enervating innovations and uſurpations of the *antichriſtian church of Rome*, the grand enemy

* Viz. in the reign of Henry I. the County Court was aſſembled *twice*, and the Hundreds and Wapentachs *twelve times*, in a year.—"Debet enim Shiref-"gemot *bis*, Hundreda et Wapentachia *duodecies*, *in* "*anno*, CONGREGARI." 4 Inſt. c. 55. p. 260. Theſe Courts, in their different degrees of importance, proportionable to the magnitude of all queſtions to be diſcuſſed, were the proper *Courts of the Congregation*, to decide according to *the due laws of true Chriſtianity* before-mentioned.

enemy* to the true *limited Epiſcopacy*.

For,

* The inimical ſpirit of *Popery* againſt the true Chriſtian *Epiſcopacy* began very early to be manifeſted; for, the *Apoſtacy* could not generally take place (as I have before remarked) until the *Clergy and People* were deprived of their ancient *right of electing their own Biſhops*, ſo that a violent uſurpation of that *right* muſt of courſe be found amongſt the *firſt innovations of antichriſt*. A remarkable inſtance of it by POPE GREGORY THE FIRST, in the year 591, I find recorded even by a *papiſt* Abbot, who appeals to *Gregory*'s own epiſtles and decretals for the truth of it; ſo that the *apoſtacy* was certainly at that time begun; for, though Gregory himſelf is too commonly eſteemed a good primitive *Biſhop*, yet his Church had then, for *ſeveral years* back, received the brand-mark of the *growing apoſtacy*, by permitting their Biſhops to revive the *wounded head* of Roman power, by aſſuming the Pagan Title of *Pontifex Maximus*, which the Emperors of Rome *alone* had excluſively held from the time of Julius Cæſar, down at leaſt to Valentinian the Third, to whom it may be traced, if not to Auguſtulus, till it became extinct or dead with the power of the laſt Emperor of the Weſtern branch: ſo that *Pontifex Maximus* was manifeſtly the *head*, "*that was, as it were, wounded to death by a* "*ſword*,"—viz. the ſword of Odoacer, who then took poſſeſſion of "*the ſeat of the Dragon*," and ſet up an independent *kingdom* in ROME itſelf, without the peculiar title of UNLIMITED ROMAN dominion; ſo that afterwards when *the Biſhops of Rome*, by aſſuming that title, did actually revive that blaſphemous head, "*his* "*deadly wound was healed, and all the world wondered*

"*after*

For, the *Popiſh Biſhops*, by continually graſping

" *after the Beaſt*;" and well might they *wonder*, becauſe the title of *Pontifex Maximus*, is not leſs foreign to the primitive church of Chriſt than it had been *peculiar* to the head of the *Roman* idolatrous *Augurs*, on account of a *ridiculous* and *ſtrange* kind of ceremony in the inauguration of the elected PONTIFF *; whom they placed in his pontifical robes under a wooden PONS, or bridge, built for that purpoſe over a dry ditch, and bored full of holes, that the blood of the victim (a bull ſacrificed to Jupiter on the top of the bridge) might fall through the holes upon the head and robes of the PONTIFF, whereby that *Vicar of Satan on earth* was rendered " *terrible to behold*," that he might be " *ſaluted*," (moſt probably

* La Conſecratione di queſto PONTEFICE e tanto *ridicula et ſtrana*, " che ella merita d'eſſere tutta interamente dimoſtrata nel medeſimo " modo che l'ha ſcritta Prudentio: il quale dice che queſto PONTEFICE " nel ſuo habito *Pontificale*, con *la mitera*," (and it was a *mitre* of the ſame ſhape as thoſe worn by the modern *Pontifs*, except that it was not then *marked* with the ominous inſignia of *three crowns*; and the *ſpike* at the top, as repreſented in a coin of Auguſtus Cæſar, was not yet converted into *a croſs*,) " in teſta, et la veſte alzata *entrava in* " *una foſſa, ſupra la quale era un* PONTE *di legno tutto buccato*," (ſo that the name of *Pontifex* is manifeſtly derived from this *wooden Pons*, or Bridge, bored full of holes,) " dove dal vittimario era condotto un " toro ornato tutto di fiori et d'oro intorno al capo, che il detto " conduttore feriva nel petto, et del *Sangue* coſi caldo che n'uſciva " et trapelava *per i buſchi del* PONTE, *era il detto* PONTEFICE tutto " imbrattato con fregarſe ne gl' occhi, gl'orecchi, le labia, et la bocca, " et coſi uſcendo fuora coſi ſporcho et brutto, et *molto terribile a ri-* " *guardare*, era da tutto il populo ſalutato et ADORATO, &c." Diſcorſo della Religione de gl'antichi Romani. Compoſto in Franzeſe dal S. *Guglielmo Choul*,—et tradotto in Toſcano da M. *Gabriel Simeoni*. Fiorentino in Lione, 1569. P. 236.

graſping at *undue power*, at length obtained in England a removal of all ecclesiastical

probably on the FEET,) "*and* ADORED *by the people:*" whereby the ancient Pagan *Pontifs* were notable types as well of the *bloody* Roman Emperors, who afterwards uſurped to themſelves the *pontifical* dignity and office, and were likewiſe ADORED and *deified*, as of the ſtill *more bloody*, though ADORED, *eccleſiaſtical* Apoſtates, who, under the *ſame title*, and authority, of *Pontifex Maximus*, drenched all Europe in *blood*, by ordering *cruſadoes* even *againſt Chriſtians*, and inciting their votaries to *blood*, by grants of plenary indulgences for ſin!

This true etymology of the word *Pontifex* proves that it is *foreign* and inapplicable to any office or dignity in the *Church of Chriſt*; though Latin writers, ſince the middle of the ſixth century, have induſtriouſly ſubſtituted it for *Epiſcopus*, the proper official title of *Chriſtian Biſhops*. Near twenty years after the time that the *Roman* Emperors loſt this title of *unlimited* and *illegal* power by the *ſword* of ODOACER, it was wickedly aſſumed by Pope *Gelaſius*, and afterwards by Anaſtaſius the ſecond, and other ſucceeding Popes, as the learned *Anthony Van Dale* has proved in the ſecond of his nine Diſſertations, p. 192. Nevertheleſs, *the wounded head* could not be ſaid to be completely *healed*, (and conſequently the commencement of 1260 years of *beſtial* power could not take place,) whilſt the *regal* power of the *Heruli*, of the Gothes, or of the Greek Emperor, by his Exarchs, were poſſeſſed of *the throne of the Beaſt*. But, *before* the time of Pope Gregory, three of the firſt national regal governments, or horns, (without reckoning the go-

vernment

cleſiaſtical cauſes, and religious queſtions, reſpecting

vernment of the *Greek* Emperors, which does not ſo properly fall under that deſcription, becauſe it was cotemporary with the *former* empire,) which ſprang up from the ruins of the *Imperial Pontifex Maximus*, had actually poſſeſſed themſelves of the *imperial* city by *conqueſt*, and again had ſucceſſively loſt their dominion, being fundamentally deſtroyed, and "*plucked up by the roots*," viz. the kingdom of the Vandals, from Africa under Genſeric, that of the Heruli under Odoacer, and that of the Oſtrogoths, from Theodoric to Tottilas and Theias. And, as ſoon as theſe *three horns were fallen* from their power in the *bloody city*, Pope *Pelagius* (a name which ſignifies DIVISION, as much as the name of the ancient *Peleg*, or *Phalec*, "*for in his days was the earth divided*") was emboldened publicly to avow and eſtabliſh a ſyſtem of *religious perſecution* and *compulſion*, in order to give effectual weight to papal deciſions; for he ordained, "*that Hæretics and Schiſmatics might be* "*coerced by the* SECULAR ARM, *when they could not be* "*drawn to wholeſome doctrine by arguments.*"—"Ut "hæretici et ſchiſmatici coerceri etiam SECULARI "MANU poſſent, quando ad ſanitatem rationibus non "deducerentur." (Platinæ hiſt. de vitis pontificum, p. xxxiii. b.) And Pope Gregory was ſo confident in this *pontifical* ſyſtem of the SECULAR ARM, (as well as all his ſucceſſors, who have generally been adroit in engaging the neighbouring powers to avenge the *Papal* quarrels, occaſionally, one upon another,) that he was not content merely to *rebuke*, but dared even to *affront*, the Greek Emperor *Mauricius*, by contumeliouſly

taunting

reſpecting *morality* as well as *doctrine*, from the cognizance of our *congrega-*

 tional

taunting him with his *very low deſcent*, "*ex infima ſorte* "*hominum*," ſaid Gregory. See Platinæ hiſt. p. xxxv.

We need not wonder, therefore, at his boldneſs, in uſurping an *unlimited* authority over the poor *unarmed* Italian BISHOPS, (who were otherwiſe his equals in real dignity of office, depoſing them "*according to* "*his will*," (a manifeſt token of the Beaſt,) and openly violating the moſt ſacred *rights* of the Italian CLERGY, AND PEOPLE, in their *epiſcopal* elections, that he might fill the Italian ſees with *Monkiſh* Prelates, who would be more attached to the growing power than *married Biſhops*, ſuch as were, for the moſt part, thoſe of the primitive Church. But the particular inſtance, which I propoſed to mention, was at Rimini, in the year 591, where, on the death of a Biſhop, Gregory ſent a legate to interfere in the *election*; and one Odeatinus, a nobleman, being nevertheleſs *elected* Biſhop, the *Pontif was pleaſed* (PLACUISSET PONTIFICI) to command them, on pain of *pontifical cenſure*, to place *another perſon* in the ſee. The man, *elected* and *conſecrated* for this purpoſe by Gregory, was Caſtorius, who, not being *elected* by the people of Rimini, was of courſe thwarted by them, and ſuffered many things by PARTY OPPOSITION, the very evil which Gregory pretended to avoid by his MOST PARTIAL *corruption* of the election, "ne illam, i. e. *elec-* "*tionem*, STUDIA PARTIUM *corrumperent*;" for that was his plea for interference. Beſides this oppoſition, Caſtorius was grievouſly afflicted with a diſtemper in his head, on account of which he was invited by the

Pontif

tional courts of common law *, to their own *conſiſtories*, to be holden at ſuch *times*,

Pontif to change the air and viſit him at Rome; but, being even there no better, he requeſted the Pontif that a Paſtor might be ſent to his church, who could better promote the divine ſervice; and, when the Pontif's hope of Caſtorius's recovery by the Roman air abated, he adminiſtered the charge of the church of Rimini by Leontius, Biſhop of Urbin, (a ſecond uſurpation,) who was alſo a Biſhop of *his own* appointment. In the mean while the ſick *Caſtorius* urged the Pontif with his entreaties; and at length prevailed on him to grant "POWER TO THE CLERGY AND PEOPLE" of Rimini to "*elect a Biſhop for themſelves*," (i. e. to be re-inſtated in their ancient *right*,) "which was done *in the year* "595, *as may eaſily be known*" (ſays my author) "*from* "*the Epiſtles of Gregory the Great*;" and he refers us to the *decretals*, where the whole affair (ſays he) is related. See Italia ſacra, ſive de Epiſcopis Italiæ, &c. Autore D. Ferdinando Ughello Florentino ABBATE S. S. Vincentii, et Anaſtaſii ad aquas Salvias Ordinis Citercienſis, et Sacræ Indicis Congregationis Conſultore. Tom. II. P. 418. Publiſhed *permiſſu ſuperiorum*.

* ——"Ut nullus *Epiſcopus* vel *Archidiaconus* de Le-"gibus *Epiſcopalibus* AMPLIUS *in Hundretto*" (i. e. in *Turno*) "placita teneant," (which is a plain acknowledgement however, that all pleas, relating to *Epiſcopal Laws*, were held in the *Hundred* Court before the publication of this *pretended* charter,) "nec cauſam

"quæ

times, and at ſuch *places*, as they themſelves ſhould be pleaſed to direct; ſo that *when* and *where* were equally unlimited and uncertain! and the cauſes were then to be adjudged according to *foreign* Canons and Decretals, *unknown to the people!* More effectual means could not be deviſed for reducing the nation to the moſt abject ſlavery under the papal uſurpation! To accompliſh this baneful purpoſe, a fictitious

" quæ *ad regimen animarum* pertinet ad judicium *ſæcula-*
" *rium hominum* adducant, ſed quicunque ſecundum
" *Epiſcopales Leges*, de quacunque *cauſa* vel *culpa* inter-
" pellatus fuerit, ad locum quem ad hoc *Epiſcopus*
" *elegerit*, et *nominaverit*, veniat, ibique de cauſa ſua
" reſpondeat, et *non ſecundum Hundrettum*," (" this not
" intended of the *Hundred* Court," Sir E. Coke remarks, " but, that in thoſe times the Sheriff did hold
" his Tourn *per Hundreda*. See Mag. Chart. cap. 35.
" and the expoſition thereupon,") " ſed ſecundum
" *Canones* et *Epiſcopales Leges* rectum Deo et Epiſcopo
" ſuo faciat. Si vero aliquis per ſuperbiam elatus ad
" *juſtitiam Epiſcopalem* venire non voluerit, vocetur
" ſemel, et ſecundo, et tertio; quod, ſi nec ſic ad
" emendationem venerit, *excommunicetur*, &c." 4 Inſt. c. 53. p. 259.

fictitious charter was produced, bearing the title of "*Wilhelmus gratia Dei Rex "Anglorum,*" &c. that it might pass for a deed of King William, commonly called the Conqueror; but, even supposing it to have been authentic, yet, as it was neither published nor known till near 300 years after the death of William, viz. not till the second year of King Richard II. anno 1378, the *invalidity* of such an instrument, to alter "*the due process of the "law,*" must be sufficiently obvious: at the last-mentioned period, however, this *pretended* charter of William was ENROLLED, it seems, FOR THE FIRST TIME, viz. in 2d Richard II. "BEING NEVER HEARD OF BEFORE;" as Lord Coke remarks; (4 Inst. c. 83. p. 259.) and the same learned author has produced ample proof from the *Red Book* before quoted, that "ECCLESIASTICAL "CAUSES *were handled in the* TOURN,"

(the

(the Sheriff's CIRCUIT, or circular viſitation of the HUNDREDS,) "*in the reign* "*of Henry* I. LONG AFTER *the ſaid ſup-* "*poſed charter. And certain it is,*" (ſays he,) "*that the Biſhops Conſiſtories were* "*erected, and cauſes eccleſiaſtical removed* "*from the* TOURN *to the Conſiſtory,* "AFTER *the making of the ſaid Red Book:* "Ideo penes lectorem ſit judicium." It cannot, therefore, be denied, that this *wicked*, nay, I may juſtly call it, *diabolical*, encroachment of the *papal power* on the moſt ſacred rights of the people was effected (like moſt other *innovations* of the *apoſtate* church) by the help of an abominable LIE,—by a FORGERY, ſo groſs, and obviouſly *fraudulent* and *falſe*, that the ſucceſs of it cannot reaſonably be attributed to any other cauſes than (*firſt*, with reſpect to the *deceived*) to that kind of *judicial blindneſs*, which darkens the perceptions of all perſons who

who neglect the holy ſcriptures, and "*receive not the love of the truth*," after being fairly warned, that, "*for this* "*cauſe God ſhall ſend them ſtrong deluſion* "*that they ſhould believe* A LIE:" (2 Theſſ. ii. 11.) And (ſecondly, with reſpect to the *deceivers)* it may fairly be attributed to the conſequent prevalence of "*the working of* SATAN, *with* "*all power*, and *ſigns*, and LYING *won-* "*ders, and with* ALL DECEIVABLENESS "of UNRIGHTEOUSNESS,&c." (2 Theſſ. ii. 3 to 12.) a prevalence and ſucceſs which God *permits* in his juſt judgement againſt *national* delinquency; for "DE- "CEIVABLENESS OF UNRIGHTEOUS- NESS" are terms ſo clearly deſcriptive of the above-mentioned abominable *cheat* againſt the RIGHTS *of our congregational* Courts, that "*the Father of lies*" may well be deemed the *firſt ſuggeſter* of it, as well as an active promoter of its ſucceſs;

ceſs; ſo that his *viſible* partners in the *deceit*, and *their church*, (the *power* of which, in this kingdom, was then moſt eſſentially promoted by it,) muſt neceſſarily be ſtigmatized by *their ſhare of labour and profit* in ſo palpable a FRAUD: for as "*no* LIE *is of the truth*," (1 John ii. 21.) "*the deceivableneſs of unrighteouſneſs*" beforementioned, and its *baneful ſucceſs*, afford, as in many other inſtances, (ſome of which I have expoſed in my *Declaration of the People's Rights*, p. 127. to 135; afford, I ſay,) an unqueſtionable *token* of their *apoſtacy* from the King of *righteouſneſs* *, and of their conſequent fellowſhip with *the Prince of this World* †,

* "Shall the throne of *iniquity* have fellowſhip with "thee, which frameth *miſchief* by a law? (Pſ. xciv. 20.) "for what fellowſhip hath *righteouſneſs* with *unrighteouſneſs*? And what communication hath *light* with "*darkneſs*? And what concord hath *Chriſt* with "Belial?" 2 Cor. vi. 14, 15.

† —"Why hath *Satan* filled thine heart to *lie*?" &c. (Acts v. 3.) "for *he* is a lier and the father of it:" (John viii. 44.)——"*without*" (i.e. out of the pale of *Chriſt's*

who "*hath nothing in Chriſt!*" (John xiv. 30.)

By

Chriſt's Catholic Church,) "*are dogs, and ſorcerers, and* "*whoremongers, and murderers, and idolaters, and* WHO-"SOEVER LOVETH AND MAKETH A LIE. (Rev. xxii. "15.)—"SPEAKING LIES IN HYPOCRISY, having "their conſcience ſeared with a hot iron; FORBIDDING "TO MARRY, TO ABSTAIN FROM MEATS, &c." (1 Tim. iv. 1. to 5.) To enforce *thoſe* and ſuch like "*doctrines of Demons,*" (as they are expreſsly termed in this text,) the above-mentioned abominable FORCERY againſt the rights of our *congregational courts* were manifeſtly deviſed and intended! Now, leſt the ſeverity of my expreſſions ſhould give *offence*, inſtead of *warning*, to thoſe perſons for whoſe ſervice it was intended, I think it neceſſary to declare, that my cenſure is not *perſonal* againſt the *individuals* of the Romiſh perſuaſion, but againſt the profeſſion itſelf, againſt the *iniquity*, *falſehoods*, *errors*, and *uſurpations*, of the PAPACY, (in the ſame manner that I profeſſed myſelf an *enemy* to STANDING ARMIES, without the leaſt diſreſpect, or breach of charity, towards the *individuals* incorporated therein. See the Preface to my Declaration of the People's Rights, p. xxxvi.) I may fairly except, however, ſuch *individuals* as ſhall be duly convicted of *wilfully* promoting *forgeries* and *falſehood* to prop the *papal* tyranny and deluſion: but, with reſpect to all other *individuals* of that church, who are not ſo directly chargeable with "*deceivableneſs of unrighteouſneſs*" in their profeſſion, I am bound not only to regard them with

chriſtian

By this miſerable forgery, the courts of the *congregation* in England were deprived of the preſence and aid of their *Biſhops* in public judgement *, a *preſence*

chriſtian charity, but alſo (after ſo ſevere a cenſure of their profeſſion in general) freely to declare, that there are many, very many, *individuals* among them, whoſe various good qualities and virtues juſtly entitle them to my ſincere eſteem and reſpect; to ſuch, therefore, I can only add in the words of the Scripture——"*Come out of* "*her, my people,*" (i.e. all ye that *fear God*; and the more eſpecially as the period of her power, the completion of the 1260 years of *Roman* tyranny, veſted in ten, or rather eleven, crowned Horns, is probably not far diſtant; all the *prophetical marks* of her apoſtacy being evident ſo early as about the middle of the 6th century,) "*that ye be not partakers of her ſins, and that ye* "*receive not of her plagues. For her* SIN *hath reached* "*unto Heaven, and God hath remembered her* INIQUI-"TIES!" Rev. xviii. 4, 5.

* This material branch of the Biſhop's *duty*, as a great *popular* magiſtrate, is clearly proved by Sir Henry Spelman. See "*Reliquiæ Spelmannianæ*, publiſhed by Biſhop Gibſon, p. 76.——"It appeareth by Epiphanius," (ſays Sir Henry,) "that, in his time, (as alſo "many *hundred* years after,) Biſhops and Clergymen "did hear and determine cauſes, leſt Chriſtians, againſt "the rule of the Apoſtle, ſhould go to law under *Heathens* and *Infidels*. And it is ſaid, in the firſt Epiſtle of "Clement, (if it were truly his,) that St. Peter him-

"ſelf

and *aid* of the utmoſt importance to the welfare

" ſelf did ſo appoint it." And he previouſly, in the ſame chapter, cites a Canon that was ordained A. D. 517, in concilio Taraconenſi, &c. " That Nullus " Epiſcopus, vel infra poſitus," (or official,) " die " Dominico cauſas judicare præſumat. That no Biſhop " or inferior perſon preſume to judge (or try) cauſes on " the Lord's day." And, in page 116, where he cenſures the Biſhops of the eleventh and twelfth century, who affected to get into their hands the ſecular power of *counties*, *ſherifwics*, and conſtableſhips of caſtles, as—" *Walter*, Biſhop of *Durham*," (who,) " having " bought the county of *Northumberland* of *William* the " Conqueror, would needs *ſit himſelf in the County* " *Court*; but paid dearly for it: for his countrymen " furiouſly ſlew him, even *ſitting there*; Matt. Paris, " in ann. 1075;" and " *Hugh*, Biſhop of *Coventry*" (who) " exerciſed the Sheriff's place, but was ex- " communicated for it, as *contra dignitatem Epiſc.* " and ſo acknowledged his error." " Dicetus in ann. " 1190." To which he immediately adds, " But " every one will ſay, it was *a common thing in old time* " *for* BISHOPS *to be* JUDGES *in ſecular courts*. I con- " feſs it," (ſays Sir Henry,) " and think it *godly* and " *lawful* as it was uſed at the firſt. For the Biſhop " and the Earl ſat together in the *County Court*: the " *Biſhop*, as Chancellor to deliver *Dei rectum* and *popu-* " *lum docere*; the *Earl*, as Secular Judge, to deliver " *rectum ſeculi* and *populum coercere*; as is manifeſt by " the laws of King *Edgar* and others. But, when the " Biſhops began to ſupply both places, and to be

" meer

welfare of the *people* and of the whole *commonwealth*,

" meer Judges of ſecular courts, then were they *prohi-*
" *bited* by many Canons." This *prohibition* of the *Canons*, however, had generally a very different object in view from the oſtenſible or pretended motive of their being ordained. I ſpeak of the *later* Canons. The *ancient* Canons confirmed the *rights* of the CLERGY and PEOPLE in *epiſcopal elections*, *marriage*, &c. but ſome of the *later* Canons, on the contrary, favoured the encroachments of tyranny and papal apoſtacy *. But, with reſpect

* In the *ancient* Canons (commonly called *Apoſtolical*) it is ordained, that " *if any Biſhop*, *Prieſt*, *or Deacon*, &c. *ſhould abſtain from* MAR-
" RIAGE, FLESH, and WINE, *not on account of*" (religious) " DIS-
" CIPLINE," (δι' ασκησιν, or *exerciation*—which was only προς καιρον —" *for a time, that they might give themſelves to faſting and prayer*," as allowed by the Apoſtle, 1 Cor. vii. 5; under an expreſs injunction that married perſons ſhould " *come together again, leſt Satan ſhould tempt*
" *them*, &c. *through their*" (natural) " *weakneſs*;" (it being manifeſt that ſuch mere *temporary diſcipline* is alone to be underſtood in this place,) " *but through* DEFILEMENT, δια βδελυριαν, (i.e. through pretence that *marriage* or *meats* DEFILED the body,) " *forgetful that*
" *all things are exceeding good, and that* GOD *made* MAN, *male* and
" *female, and*" (viz. by this doctrine of defilement) " *blaſpheming the*
" *Creator, either let him be* REFORMED," (η διορθουσθω,) " *or let him*
" *be depoſed*, &c." See Canon li. And the fifth Apoſtolical Canon alſo ordained that " *a Biſhop*, or *Prieſt*, or *Deacon, ſhould not put*
" *away his wife on pretence of religion*, or *piety*,"—προφασει ευλαβειας. But ſome of the *later* Canons, on the contrary, invade the moſt *natural rights* of humanity. The Council of Carthage, held about the time of Pope Cæleſtine, (A.D. 397,) commanded *Biſhops*, *Prieſts*, *and Deacons*, *to hold chaſtity*, and to " *abſtain* (ETIAM AB UXORIBUS) *even from*
" *their wives*." See Howel's Synop. Canonum, p. 117. So the 12th Canon of the council, held *in Trullo* of the Imperial Palace of Juſtinian

commonwealth, whilſt the people retained any

ſpect to the preſent points, viz. the duty of *Biſhops* to preſide in the *congregational courts* of common law, and the people's ancient *right* of judging *eccleſiaſtical cauſes* therein, the learned SELDEN bears ſtill more ample teſtimony in his "*Titles of Honour.*" P. 520. "And "the *Scyregemot* (which was," ſays he,—"a court "kept twice every year, as the Sheriff's turn is at this "day) was held by THE BISHOP of THE DIOCESS, "and *the* EALDORMAN, (in ſhires that had *Ealdormen*,) "and by the BISHOPS *and* SHERIFFS, in ſuch as were "committed

Juſtinian the Second at Conſtantinople, cenſures the Prelates of Africa and Libya, who "*after their ordination did* NOT *refuſe to live* "*with their own proper wives, thereby*" (ſay the *infatuated* authors of the Canon) "*occaſioning offence and ſcandal to the people*, &c."—and therefore this Canon ordains "*that the like*" (i. e. men living with their *own proper married wives*, ταις ιδιαις γαμεταις) "*ſhould* NOT "*by any means after that time be done!!!*" And the learned Theodore Balſamon, Patriarch of Antioch, in the twelfth century, cites ſeveral conſtitutions of the Emperor Juſtinian the Firſt, which were called τα νεαρα, i.e. *novellæ*, or novelties, (an ominous title,)—which ordained that a man "*was not to be promoted to epiſcopal dignity who has* "*a wife or children*," τον εχοντα γυναικα η τεκνα; (a glaring oppoſition to the rules laid down in Scripture for the choice of a Biſhop;) and again, "*that Biſhops are to be depoſed who dwell with a woman*,"—συνοικουντας γυναικι. See the Paris Edition of Balſamon's Commentary on the Canons, p. 373, 421, and 374. Thus the Authors of ſome of the *later Canons* are *marked* with a manifeſt ſtain of *apoſtacy*, as men infatuated and deluded by the *wiles of Satan*, who holds them "*forth to open ſhame*," by the evidence of their own Canons, as teachers of "*the doctrines of Demons*," viz. "*forbidding to marry*," (and commanding) "*to abſtain from meats*, &c." of which devices and doctrines the Apoſtle hath given expreſs warning. (See 1 Tim. iv. 1-6.)

So

any ſhare of their juſt and ancient *right* in the

" committed to Sheriffs that were immediate to the " King. And ſo" (ſays he) " *both* THE ECCLESIAS- " TICAL and TEMPORAL LAWS were TOGETHER " *given in charge to the country.*" The authorities cited by Mr. Seldon for this are as follow :—" Videſis Leg. " Edgar, cap. 5. et not. ad Edmer. pag. 166 & 167. " Hiſtoriam noſtram de decimis, cap. 14. §. 1. et Leg. " Canut. cap. 17. Lambard." Sir Edward Coke has alſo cited the laws of Edgar to the ſame purpoſe in his ſecond Inſtitute, p. 70, viz.—" *Celeberrimus eſt omni Sa-* " *trapia bis quotannis convenius agitor, cui quidem* ILLIUS " DIOECESIS EPISCOPUS, *et Senator interſunto, quorum* " *alter* JURA DIVINA, *alter humana, populum edoceto*; " which alſo agreeth" (ſays he) " with *Magna Charta*, " and other ſtatutes, and continual uſage. By that " which hath been ſaid, it appeareth" (continues Sir Edward Coke) " that the law, made by King Henry " I. was (after the great heat of the conqueſt was paſt) " but a reſtitution of the ancient law of England: and " foraſmuch as *the* BISHOP *with the Sheriffe did go in* " *circuit twice every year by* EVERY HUNDRED within " the county, &c."

So that the almoſt univerſal prevalence of theſe *open marks* of *apoſtacy*, throughout Chriſtendom, againſt the *expreſs warning of holy Scripture*, againſt the ſtricteſt cautions of the *ancient apoſtolic Canons*, and even againſt *nature itſelf*, is ſo *wonderfully* extraordinary, that it would be really *incredible*, were not the evidences of it, which ſtill exiſt, notorious and undeniable!!! The *natural* depravity of mankind tends not to ſuch effects, ſo that we can attribute it only to *ſupernatural* agents; and, though many of the boaſted *monkiſh revelations* were really mere *human* forgeries, yet I believe that many others were real *apparitions of ſeducing ſpirits*, in order to haſten the *unnatural apoſtacy!*

the election of Biſhops; but little to be regretted, when the Biſhops, through the total perverſion of *that right*, (by the gradual encroachments of monks, popes, and kings,) ceaſed to have that *intimate* connection with the *people* and *their intereſt*, which their predeceſſors in office were wont to acquire ſo *naturally* by *popular* elections. But the *later* Biſhops, choſen by the *uſurpers* of *epiſcopal elections* for very different purpoſes, and ſelected, for the moſt part, from the *monaſtic* orders, then falſely called *regular*, (inſtead of the *regular* parochial *prieſthood*,) did as *naturally* become the dangerous advocates for very different *intereſts*, the *intereſts* of their uſurping *conſtituents*, whether *monkiſh* or *monarchical*; and, more eſpecially, about the time of Richard II. when the notorious forgery abovementioned was committed.

The

The courts of the *congregation* were alſo, by this deteſtable forgery cheated of *the power of excommunicating* irreligious and prophane perſons from their *own* body or ſociety; a *power* moſt eſſentially their *own*, but which, lodged where it is at preſent, merely with the Biſhops of a reformed Church, (who want it not for *undue* purpoſes like the *papal* prelates,) neither promotes *epiſcopal dignity* nor due *eccleſiaſtical authority*; becauſe *eccleſiaſtical* judgements and cenſures, by flowing in an improper channel, have excited, and ever will excite, the jealouſy of the people; and, of courſe, they have been generally thwarted and oppoſed in our courts of *common law*, (through a juſt jealouſy, in the courts, of the Biſhops *ſeparate conſiſtories*,) and have ſometimes been reverſed and annulled with heavy coſts and damages againſt the *eccleſiaſtical judge*, or, perhaps, (what is worſe,)

againſt his executors and innocent family after his death; by which means, the neceſſary controul of vice and immorality is weakened, and *eccleſiaſtical cenſures*, howſoever juſt and proper in themſelves, are but too little regarded by rich and opulent offenders that can ſpare money for litigation; ſo that the public is grievouſly injured by infectious examples of depravity without any effectual means of reſtraining them. But, it would be far otherwiſe, if the *congregational courts* were reſtored to their ancient powers of acting by the common law, with cognizance of all cauſes, *eccleſiaſtical* as well as *civil*, which formerly they enjoyed, as I have already proved. For as *law* "was "deemed *the dictate of reaſon* *," and "*reaſon*" juſtly deemed "*a ray of the* "*divine light* †," *common* to all men of *common*

* "Lex eſt dictamen rationis." Jenk. Cent. p. 117.

† "Ratio eſt radius divini luminis." Co. Lit. 232. b.

common ſenſe, as being derived and inherited from our firſt *common parents*, ſo it followed, of courſe, that, though many *expreſs laws* for particular occaſions and likewiſe various cuſtoms and uſages, proved by legal precedents, formed a part of our *common law*, (of which the reverend ſages of the law and regular ſtudents were, undoubtedly, the propereſt judges, inſomuch that the buſineſs of the courts could not be carried on without their aſſiſtance,) yet by far the greateſt and moſt eſſential part of the common law conſiſted in the *exerciſe of reaſon*, duly to diſcern between *good* and *evil*, between *right* and *wrong*, between *juſtice* and *injuſtice*, in all caſes whatſoever, by the general principles of *natural right* *, and by thoſe alſo which may

* See the 1ſt, 2d, 5th, and 8th, chapters of Doctor and Student.

be drawn from God's Revelation in the Holy Scriptures, which is declared to be the ſecond foundation of our law †.

And, as the members of a chriſtian community are required by the Scriptures to have their "*ſenſes exerciſed, through* "HABIT ‡," or uſe, "*to diſcern both* "*good and evil*," — ſuch aſſemblies, with the aſſiſtance of the ſages and regular ſtudents of the law, were ſurely competent to determine whether any offence complained of, or preſented to them, was really either *immoral* in itſelf, or a *nuiſance*, in any reſpect, to the community; and, in either caſe, "*the* LAW "*will find a remedy* §," be the particular circumſtances of the caſe ever ſo new or uncommon;

† See Doctor and Student, chapters 3 and 6.

‡ Των δια την ΕΞΙΝ τα αισθητηρια γεγυμνασμενα εχοντων προς διακρισιν καλυ τε και κακυ. Heb. V. 14.

§ "Lex ſemper dabit remedium." Prin. Leg. et Æq. p. 52.

uncommon; for *juſtice** ought not to be foiled for the want of an *expreſs* ſtatute, or *a precedent for proceeding*, as at preſent†; but the *law* is required to be *effective*,

* "Lex deficere non debet in *juſtitia* exhibenda." Jenk. Cent. p. 4. "*Juſtitia* non eſt neganda, non diſ-"ferenda." Jenk. Cent. p. 93 and 129. "—Ne-"mini neganda eſt." Ib. 176. "Intereſt reipublicæ "ne maleficia remaneant impunita." Ib. 31, 117, and 223. "Law will not ſuffer wrong." Grounds and Rudiments, p. 188.

† Juſtice indeed, even at preſent, does not fail for *want of laws*, but, rather, by having *too many*; for our *Acts of Parliament* have been multiplied of late years to an *exceſs* that is almoſt deſtructive of their end; *exceſſive*, as well in *number*, as in tedious *prolixity*; for, by neglect of the *common law*, men are apt to conceive that they have *no remedy* for abuſes but *ſtatute*-making, ſo that the number of our Acts of Parliament is annually increaſed, though the difficulty of underſtanding and retaining them in memory regularly increaſes with the unweildy bulk of the collection, and thereby renders them more favourable to *evaſion* and *impunity* than to *juſtice* and *right*, more *profitable* to the *venal* talents of perverting orators than *effectual* for the correction of manners. Hence ariſe the difficulty, the uncertainty, and the intolerable expence, of obtaining juſtice, whereby *prudent men* are frequently induced rather to

loſe

effective *, and all men, however great, were made to regard it by *amerciaments*, or mulcts, in proportion as well to the *crime* as to the *wealth*, or ſubſtance, of the offender; the *contenement* of the land-owner being duly conſidered, the *merchandiſe* of the merchant, and the *waynage* of

loſe their right than to riſque the expence of defending it in the ordinary courſe of juſtice; and *violent men*, on the other hand, are prompted, by the difficulty of obtaining juſtice, to revenge their *own* quarrels with their *own* hands! Hence *duelling*, *bloodſhed*, and *murder!* which are ſtill farther encouraged by the corrupt, modern, practice of the courts, in laying aſide the ancient, legal, diſcrimination between *manſlaughter* and *murder*, as I have ſhewn at large in a diſtinct tract on that ſubject, printed ſeveral years ago, (in 1773,) and then ſent to *all the judges*; but it has not been in the leaſt regarded, though I have never had reaſon to apprehend any error in the performance, none having yet ever been pointed out, and the modern prevalence of *duelling* proves that the ancient doctrine and diſcipline of the courts (which alone I have aſſerted) was certainly right and neceſſary to be reſtored.

* "Law will rather ſuffer things againſt the princi-
"ples of law than that a man ſhall be *without a re-*
"*medy*." Grounds and Rudiments, p. 188.

of the huſbandman. (See magna Charta, cap. 14.)

There is no poſſible caſe, either of *immorality* or even *inconvenience*, but what is within the reach and correction of the COMMON LAW; for, it is a rule therein, that "*nothing which is againſt* REASON *is lawful*†;" and, *ſurely*, every thing that is *immoral* is "*againſt reaſon*;" and again, by another rule, "*nothing* "*that is inconvenient is lawful*§." And *eccleſiaſtical* caſes were alſo *particularly* regarded by it; becauſe, whatever things related to the *advancement of religion* were, *in law*, deemed *of the higheſt conſideration*‡; ſo that, if the *congregational courts*

† "Nihil quod eſt *contra rationem* eſt licitum." Co. Lit. 97, b. and Grounds and Rudiments, 228.

§ "Nihil quod eſt *inconveniens* eſt licitum." Co. Lit. 97, b. and Grounds and Rudiments, 228.

‡ "*Summa ratio eſt quæ* PRO RELIGIONE *facit.*" Jenk. Cent. p. 2. et 37. Noy, p. 1. Grounds and Rudiments, p. 318.

courts were duly reformed and re-eſtabliſhed, the juriſdiction and cognizance of all *eccleſiaſtical caſes* therein, according to ancient uſage, would not only promote *morality*, but alſo, by ſtrengthening *eccleſiaſtical diſcipline*, would really enlarge the authority and dignity of EPISCOPACY; and if, to this, the *clergy* and *people* were alſo re-inſtated in their ancient *right*, as Chriſtians, freely to elect their own Biſhops, [duly obſerving the *ſcriptural precautions* againſt *party* diviſions and *tumults*, viz. Firſt, to elect *two* unexceptionable or blameleſs* preſbyters by the common ſuffrage of *all the people*‖, or congr ation, (or, at leaſt,

* Ανεπιλημπτοι, (1 Tim. 3, 2.) Quorum vitam carpere nemo jure poteſt; or ανεγκλητοι, (Tit. 1, 7.) Inculpati.

‖ See the *mode*, as well as the *popular right*, of epiſcopal elections more fully ſtated in my Tract on the Law of Retribution, p. 331 to 339. I have there proved,

leaſt, of *all the epiſcopal communicants in each diocefs* that ſhould demand their

 right

proved, (I hope,) that the *election of Mathias*, to the dignity of an APOSTLE, was, at the ſame time, a precedent for *elections* to the office of A BISHOP; and, that "*the unexceptionable apoſtolic mode of election, de-*"*ſcribed in Acts* i. 15-26." was diſuſed, indeed, during the time that the *apoſtles* themſelves adminiſtered the affairs of the church, after the great day of Pentecoſt, when the promiſes, reſpecting *the gift of the* HOLY SPIRIT, were viſibly accompliſhed, and, during the continuance of the outward and *extraordinary* tokens of that *glorious gift*, whereby the *apoſtles manifeſted* "*their* "*authority to* APPOINT BISHOPS *without the formulary* "PRECAUTIONS *of the firſt* precedent;" but that theſe juſt and equitable PRECAUTIONS became once more deſirable as ſoon as the *extraordinary gifts of the Holy Spirit* (I mean only the *outward* manifeſtation of apoſtolic power) ceaſed in the Church, when the primitive mode of *electing* TWO *unexceptionable preſbyters by the people*, and referring the appointment of ONE *of them* to the providence of God, by the deciſion of *the lot*, according to the excellent precedent recorded in Holy Scripture, was again revived in ſeveral places, as being beſt ſuited to the *ordinary* ſtate of the church in all ſucceeding ages, for which I referred to examples teſtified by good authority; in addition to which I have lately diſcovered (amongſt the valuable MS. collections of the very learned Dr. *Tho. Mangey*, formerly prebendary of Durham, which, by the Favour of his worthy ſon, the

right of ſuffrage,) and then, after ſolemn prayer, to *decide* BY LOT, *before God and the congregation*, the appointment of *one* of

the late Rev. Mr. *John Mangey*, my affectionate relation, are now in my poſſeſſion) a reference to the council of *Barcelona*, held in the Year of Chriſt 599, wherein the re-eſtabliſhment of that moſt cautious and unexceptionable mode of *popular elections* was expreſsly decreed by the biſhops of a very conſiderable province* in Spain, (*Tarragonia*;) and, by them enjoined as a perpetual uſage, on the penalty of *depoſition*, ſolemnly denounced againſt all perſons that ſhould *preſume to act otherwiſe, in future*, whether *the ordainers* of biſhops or *the ordained*. See the 3d chapter of that council;—wherein, after reciting ſome of the neceſſary qualifications to render a man eligible to the dignity of a biſhop, they add—— "*ita tamen, ut* DUOBUS, *aut* TRIBUS, *quos ante* CONSENSUS CLERI *et* PLEBIS ELEGERIT, *metropolitani judicio ejuſque co-epiſcopis præſentatio, quem* SORS, *præeunte epiſcoporum jejunio*, CHRISTO DOMINO TERMINANTE, MONSTRAVERIT, *benedictio conſecrationis accumulet. Aliter deinceps, quod abſit, præſumptum, et* ORDINATORES *et* ORDINATOS *proprii honoris* DEPOSITIO *ſubſequatur.*" And this was ordained even where *kingly power* was eſtabliſhed, as appears by the title. "*Conſilium Barcinonenſe, æra* DC.XXXVII. "*anno* XIV. REGIS RECCAREDI, anno Chriſti DXCIX. "habitum." See Sacroſancta Conſilia, Tom. V. Paris Edition, 1671.

* "*Tarraconeſis provinciæ epiſcopi in urbem Barcinonenſem, &c.*"

of the *elected* preſbyters, according to the authentic precedent deſcribed in Acts i. 15 to 26.] the biſhops would obtain ſuch a *natural* connection with the *people*, as great *popular* officers, (which they would really be by a *popular* election, truly *eccleſiaſtical*, in the true ſenſe of the word *eccleſia*, or congregation, the ſureſt foundation for *popular* reſpect and authority,) in addition to their proper dignity, as being of the higheſt order of God's miniſters in religion, that they would effectually become what the Common Law entitles them, viz. (not merely "*robur eccleſiæ*," *the ſtrength of the church*, but, in a more enlarged ſenſe of the word *eccleſia*, including our whole national community, or *commonwealth*, of Chriſtians,) "ROBUR REIPUBLICÆ," *the ſtrength of the commonwealth* *. And,

* "Ordo Epiſcoporum eſt Robur Reipublicæ." Jenk. Cent. p. 56. viz. "*The order of Biſhops ie the* "*ſtrength*"

though theſe antient congregational courts have unhappily fallen into diſuſe, yet the law

" *ſtrength*" (force or hability) " of the *commonwealth*." But, in order to render this maxim obvious and unqueſtionable, we muſt neceſſarily imply and include, in the *epiſcopal* function, that very important branch of it already mentioned, viz. the preſiding as chief *popular* magiſtrates in the *congregational* courts of common law*; and we muſt alſo ſuppoſe the continuance or re-eſtabliſhment of the *primitive Chriſtian freedom* in epiſcopal elections; that the Biſhops, by real *popular* elections, may be truly *popular* magiſtrates, worthy to be entruſted with the civil as well as the eccleſiaſtical INTERESTS *of the commonwealth*. Mr. Sadler, in his " *Rights of the Kingdom*," ſpeaking of the time of King Henry II. ſays,—" *It* " *ſeemeth conſiderable, how all hiſtorians (of that time and* " *diſpute) do record,* THE CHOICE OF BISHOPS *to be in* " *the* PEOPLE: *in* PLEBE and in POPULO, *as well as* " *in* CLERO. *They mention* RADULPH, *ordained a Biſhop* " *for the Orcades: but rejected by all, becauſe not elected by* " COMMON ASSENT *of the* PEOPLE; PLEBIS, CLERO, " PRINCIPIS, 'tis *every where in the old Monks; and* " *how the poor Biſhop wandered up and down, as an aſ-* " *ſiſtant to other prelates*, &c." See p. 235, and more inſtances

* See alſo *Leges Edgari Regis*, N° 5, and *Leges Canuti Regis*, N° 17. (de Comitiis.) wherein the *Biſhop* is expreſsly required to attend the *Shyre-gemot*, " *and thær teacan ge Godes Riht*," " *and there* " *teach the Divine Law.*" So that the *Biſhop*'s attendance in the *Shire-parliaments*, (twice every year,) as well as in national Parliaments, is built on the very foundation of the Engliſh conſtitution.

law had duly provided for their continuance by eſtabliſhing an annual court, called *the View of Frankpledge*, wherein the aſſociation and due arrangement of the whole body of the people, in their proper *decinal* diviſions, were intended to be completed and

inſtances alſo at p. 243. The learned author of a Tract, (printed ſeveral years ago, as appears by the liſt of Tracts publiſhed at the ſame time, but without a date,) intituled, "*Lex Parliamentaria, or a Treatiſe of the Law and Cuſtom of Parliament*," &c. has cited various proofs of the *People's right* to elect Biſhops.——"*That for ſome years*," (ſays he,) "*after this new charter granted in this Engliſh Parliament*," (meaning a Parliament held at London by King Henry I.) "*the* PEOPLE *were generally* RESTORED *to the right of electing their own magiſtrates and officers, civil, military, and* ECCLESIASTICAL; *and this*" (ſays the learned author) "*I take to be the grand foundation of the* MAGNA CHARTA *of* ENGLISH LIBERTIES, i. e. *as it gave relaxation from* NORMAN *tyranny and ſlavery. And this may teach us, that the rights and liberties of the Commons of* ENGLAND *are neither ſo illegally begotten as by rebellion, nor of ſuch tender years as ſome imagine.*" &c. p. 42. The continuation of the evidence, which I have collected on this head, would take up too much room to be inſerted *in a note*, and therefore I propoſe to reſume the ſubject in a diſtinct Tract at the end of this publication.

and renewed, one of the conſtant articles of enquiry being, whether the *decenaries* were complete. " Et fiant Viſus de " Franco-plegio, ſic quod pax inviola- " biliter obſervetur, et quod DECENNÆ " INTEGRÆ SINT, ſicut tempore Hen- " rici Regis prædicti eſſe conſueverunt." Fleta, lib. 2. c. 52.

Fleta in this chapter expreſsly quotes *Magna Charta*, and gives a tranſcript of the 35th chapter of it, word for word, with very little variation, except what may enable us to *correct* the common printed copies of that noble charter, wherein we frequently find the word " *trithinga*" inſerted inſtead of " *tithin-* " *ga*," the proper word, which is manifeſt from the various reading in Fleta of the ſame import, though in the plural number, viz. " *decennæ*," i. e. *tithings*. The Engliſh verſion, commonly printed

in

in the Statute Books, has alſo, indeed, the word "*trything*" inſtead of *tithing*; and Sir Edw. Coke, in his commentary on that chapter, calls the word, three or four times, "*trithinga*," though he has copied it right in the chapter itſelf. (See his 2d Inſt. p. 69.) "—— *et quod* TI-"THINGA *teneatur integra ſicut eſſe* "*conſuevit*, &c. ——*and let the* TI-"THING *be kept entire as it hath been* "*accuſtomed to be.*" I have a copy of Magna Charta, printed for the Stationers Company in 1618, which has the ſame true reading; "—— *et quod* TITHINGA "*teneatur integra*, &c." and this reading is ſtill farther proved by Sir Edward Coke's commentary upon it; "*trithinga*, "or *tithinga*," (ſays he,) "is expound-"ed for *theothinga*, which ſignifieth "the *Frankpledge* of *tenne houſeholds*, "&c." It is manifeſt therefore that the maintaining

maintaining *the tithings entire* is expreſsly ordained by Magna Charta; ſo that we have *ſtatute law*, (the moſt *reſpectable ſtatute* that was ever made,) as well as *common law*, to juſtify the *re-eſtabliſhment* of the *tithings* throughout the kingdom without having the leaſt need to make a new act for that purpoſe. It is already *the law*, and the ſheriffs and other magiſtrates, who do not inforce it, by holding the annual view of *Frankpledge* for the *legal* purpoſe of *maintaining the tithings intire*, as directed by *Magna Charta*, are certainly deficient in their duty, and ought to be duly *amerced* by the crown for their neglect of the moſt beneficial law, both to the king and people, that was ever made; and, the more eſpecially ought they to be *amerced*, if any *riots* or notorious robberies ſhall have happened within their reſpective juriſdictions, during

ring the time of their being in office, becauſe theſe, in all human probability, would have been prevented, as well as the damages occaſioned by them, had the ſheriffs done their duty in *completing the tithings*, at an *annual View of Frankpledge*, as the law directs. See the whole chapter concerning the *View of Frankpledge* and other popular courts, as inſerted in the common ſtatute-books, 9 Henrici III. cap. 35. " No COUN-
" TY COURT from henceforth ſhall
" be holden, but *from moneth to moneth*;
" and, where greater time hath been
" uſed, there ſhall be greater: nor any
" *ſheriff* or his *bailiff* ſhall keep his
" *turn* in the HUNDRED but *twice in the*
" *year:* and no where but in due place
" and accuſtomed, that is to ſay, *once*
" after *Eaſter*, and again after the Feaſt
" of Saint *Michael*. And *the View of*
" FRANKPLEDGE ſhall be likewiſe

" at the Feaſt of Saint *Michael* without " occaſion. So that every man may have " his liberties, which he had, or uſed to " have in the time of King *Henry* our " grandfather, or which he hath pur- " chaſed ſince. The *View of* FRANK- " PLEDGE *ſhall be ſo done that our* " *peace may be kept.* And that the " TRYTHING" (for TITHING, as I have already proved) " *may be wholly* " *kept*," (or, rather, *be kept entire*, or *complete*, which may eaſily be done by means of the annual *View of Frankpledge*,) " as it hath been accuſtomed. And that " the ſheriff ſeek no occaſions, and " that he be content with ſo much as the " ſheriff was wont to have for his *view-* " *making* in the time of King Henry " our grandfather." And perhaps the ſheriff's fees for this " *view-making*" would be the only part of the buſineſs

of

of *re-eſtabliſhing* the *tithings* that would need ſome new regulation.

The account of *Frankpledge*, given in Dr. Cowell's Interpreter, is worthy of being recited at length for the ſake of thoſe who cannot have recourſe to that work.

" *Frankpledge (Franciplegium)* is " compounded" (ſays he) " of *Franc*, " (i. e. *liber*,) and *pleige*, (i.e. *fidejuſſor*,) " and ſignifieth, in our common law, " a pledge, or ſurety, for freemen. " For the antient cuſtome of England, " for the preſervation of the publike " peace, was that every free-borne man, " at fourteene yeares of age, after " *Bracton*, (religious perſons, clerkes, " knights, and their eldeſt ſonnes ex- " cepted,) ſhould find *ſurety* for his " truth toward the king and his ſubjects, " or elſe be kept *in priſon* *; whereupon

* Mr. Lambard alſo mentions this cuſtom of *impriſoning* thoſe that could not *find ſurety*. See his Tract on

" a certaine number of neighbors became
" cuſtomably bound one for another,
" to

on " the Duties of *Conſtables*," p. 7 and 8. I will recite his words, beginning with the preceding paragraph, for the ſake of more fully explaining the nature of *pledges* as well as their aſſociation in *tithing* and *hundred* courts. After mentioning the cauſe of aſſociating in *tithing* or decenary companies, viz. " —— *for the better* " *repreſſing of theeves and robbers*," he adds, " theſe " companies be yet in ſome places of England, (and " namely with us in Kent,) called BOROES, of the " ſaide word BORHES, *pledges* or SURETIE: albeit in " the Weſterne partes of the realme they be commonly " named TYTHINGS, becauſe they containe (as I " told you) the number of TENNE MEN *with* " *their families*. And even as *tenne times tenne* doe " make an HUNDRED, ſo, becauſe it was then alſo " *appointed that* TENNE OF THESE COMPANIES " ſhoulde at certain times" (every three weeks *) " meete together for their matters of greater waight, " therefore that generall aſſemblie (or court) was
" (and

* " *Le Hundred Court poit eſtre tenus chaſcun trois ſemaignes.*" See Crompton's " *Authoritie et Juriſdiction des Courts*, &c." p. 231. In ancient times the *Hundred* Court was held every *fifteen days*;—" *de* " *Quindena in Quindenam*;"—*or once in a fortnight*; but was afterwards altered, by a reſolution of parliament, (to clear up ſome doubts concerning the 35th chapter of Magna Charta,) in the reign of Henry III. to the time above-mentioned, viz. " *de tribus ſeptimanis* " *in tres ſeptimanas*, ubi prius teneri ſolent *de Quindena in Quindenam*, " &c." See Mr. Prynne's Brief Animadverſions, &c. on the fourth part of the Inſtitutes, p. 189 and 190.

" to ſee each man their pledge for forth-
" comming at all times, or to anſwere the
" tranſgreſſion committed by any bro-
" ken away. So that, whoſoever offended,
" it was forthwith inquired in what
" pledge he was, and then they of that
" pledge either brought him forth
" within 31 daies to his anſwere, or ſatis-
" fied for his offence. This was called
" *Frank-pledge*, *cauſa qua ſupra*, and
" the circuit thereof was called *decenna*,
" becauſe it commonly conſiſted of 10
" *houſeholds:* and every particular perſon
" thus mutually bound for himſelfe and
" his neighbours was called *decennier*,
" becauſe he was of one *decenna* or ano-
" ther: This cuſtome was ſo kept, that
" the

" (and yet is) called a HUNDRED. Furthermore
" it was then alſo ordained that if any man were of ſo
" evil credit, that he could not get himſelfe to be re-
" ceived into one of theſe *tythings*, or *boroes*, that then
" hee ſhould be *ſhut up in priſon* as a man *unworthie to*
" *live at liberty* amongſt men abroad."

" the ſheriffes, at every county-court,
" did, from time to time, take the
" oathes of young ones as they grew to
" the age of 14 years, and ſee, that he
" were combined in one *dozen* or ano-
" ther: whereupon this branch of the
" ſheriffe's authority was called VISUS
" FRANCIPLEGII, *View of Frank-*
" *pledge.* See *the Statute* * *for* VIEW
" OF

* What Dr. Cowell here calls a "*Statute*" is printed, indeed, under that *title* in the common Statute Book; but it has not, in the leaſt reſpect, *the form of a Statute*, nor does it appear to be, *in reality*, any thing more than what the Honourable Mr. Juſtice Barrington has conjectured, i.e. "*This ſuppoſed Statute likewiſe*" (ſays he, referring to what he had before ſaid of the preceding *nominal* Statute, viz. "This is moſt clearly *no Statute*, " but only an entry made in the *common-place* of ſome " Lawyer," &c.) "*ſeems to have been taken,*" (ſays he,) "*as well as the preceding one, from the notes or common-*" *place of ſome lawyer, who had occaſion to hold a court* " *of Frank-pledge,*" &c. It contains, indeed, moſt of the uſual *articles of enquiry* for a court of Frankpledge; but I muſt remark that the 4th and 5th articles contain a groſs perverſion of the antient articles of enquiry concerning *vagrants*, viz. "*Vagrants of whom there was any præ-*" *ſumption, or ſuſpicion, of evil,*" &c. for, this neceſſary object of enquiry is here perverted and altered to ſerve the

" OF FRANKPLEDGE, *made anno* 18. " *Ed.* 2. See *Decennier* †, Leete §, *View* " *of*

the purpoſes of a moſt deteſtable oppreſſion, *Villenage*, to bring *poor labourers* under the uſurped authority of the great Lords and land-owners as appendages to their eſtates and mere private property! Happily therefore it is *no Statute* *! The proper articles of enquiry may be found in Fleta, lib. ii. cap. 52. I muſt acknowledge, however, that this chapter contains alſo ſome articles of enquiry favourable to the abominable oppreſſion of *villenage*, but they are diſtinct articles from that reſpecting *vagrants*, and, as *villenage* is now happily aboliſhed, there can be no occaſion to recite them.

† From this head I have already, in the former part of the work, extracted what ſeemed to be moſt neceſſary.

§ " LEETE, (Leta,) *is otherwiſe called a* LAW-DAY, " SMITH *de Republ. Anglor. lib.* ii. *cap.* 18. *The* " *word ſeemeth to have growne from the Saxon*, (LETHE,) " *which*,

* I have a copy, nevertheleſs, of this falſe Statute, printed in the year 1529, (the 20. Henry VIII. only a little time before the reformation,) when the whole bulk of all the Statutes at large was contained in a very ſmall pocket-volume, little more than half the ſize of my hand, ſo that this important book was hardly big enough, in reſpect of its ſize, to be deemed even a *manual*, though it bears in its title-page the extraordinary character of containing " *more* " *Statutes than ever was imprynted in any one boke before this tyme*;" and yet, even then, it contained, it ſeems, ſome *things*, falſely called *Statutes*, that ought not to have been there. I wiſh the *many weighty folios* were once more reduced to a *ſingle manual!*

" *of Frankpledge*, and Freoborghe. That " this diſcipline is borrowed by us of the " *Romane*

" *which, as appeareth from the laws of King* EDWARD, " *ſet out by* M. LAMBERD, *num.* 34. *was a court of ju-* " *riſdiction above the* WAPENTAKE, *or* HUNDRED *, " *comprehending* THREE *or* FOUR *of them, otherwiſe* " *called* THRYTHING," [in the ſaid law, as publiſhed by Mr. Lambert, it is alſo called TRIHINGE †, LEDA, and LETH,] " *and contained the third part* " *of a province or ſhire. Theſe juriſdictions, one and* " *other, be now* ABOLISHED," (this, however, is not true; they were never *aboliſhed* though fallen into *diſ-uſe*; they are ſo far from being *aboliſhed* that the *uſe* of

* In the preceding Law of King Edward, No 33, the *Wapentac* is expreſsly declared to be the ſame Court as the *Hundred* Court, — quod Angli vocant *Hundredum*, ſupradicti comitatus vocant *Wappentachium*:" and that it is ſo named from the *ſalute* uſually paid to the chief of that court, (i. e. the *High-Conſtable*, or *Hundreder*,) by touching his ſpear with their *weapons*, or lances, in token of confirmation, (*taccare*, confirmare,) but, more expreſsly according to the Engliſh tongue, we call it (ſays the Law) WAPEN-TAC; armorum *tactus* eſt, *Wepun* enim *arma* ſonat, *tac* tactus eſt.

† Lex 34. Edwardi Regis — Tit. " De *Tribingis* et *Ledis*. " Erant etiam et aliæ poteſtates ſuper *Wapentachia*, quas vocabant " THRIHINGAS, quod erat *tertia pars provinciæ*. Qui vero ſuper eas " dominabantur, vocabantur THRIHINGEREFAS, ad hos deferebantur " cauſæ quæ non poterant definiri in Wapentachiis. Sicque, quod " Angli vocabant *Hundredum*, iſti *Wapentachium*, et, quod Anglice vo-" cabant 3 *vel* 4 *Hundreda*, iſti vocabant THRIHINGA. In qui-" buſdam vero provinciis Anglice vocabantur LETH quod iſti dicunt " TRIHINGE. Quod autem in THRIHINGE definiri non po-" terat, ferebatur in SCYRAM, i. e. to the *County Court*.

" *Romane Emperours*, or rather *Lom-*
" *bards*, appeareth moſt manifeſtly in
O " the

of them is not only, at this time, *legal*, but really required *by law*, ſo that no *new law* is neceſſary for their *revival*, as I have already ſhewn,) " *and ſwallowed up* " *in the Countie Court*" [but the *County Court* itſelf is ſo far fallen, alſo, into diſuſe, through a neceſſary conſequence of neglecting the *Hundreds* (or *Wapentaks*) and the *Trithings*, that it ſeems, as much as the latter, to have loſt its ancient importance, which was that of a COUNTY PARLIAMENT, competent for all buſineſs (bridges, turnpikes, regulations of Commons, jails, workhouſes, &c.) within each county reſpectively, buſineſs with which at preſent the great national council is clogged and peſtered, and the ſeſſions prolonged, inſtead of being diſpatched in the proper *County Courts* where the truth of the allegations for changes and new regulations would beſt be known and aſcertained] " *except they be* " *held by preſcription. Kitchen, fol.* 6, *or charter in the* " *nature of a franchiſe, as I have ſaid in* (HUNDRED.) " *The libertie of* HUNDREDS *is rare, but many Lords,* " *together with their Courts Baron, have likewiſe* LEETES " *adjoined, and thereby doe enquire of ſuch tranſgreſſions as* " *are ſubject to the enquirie and correction of this Court:* " *whereof you may reade your fill in* KITCHEN, *from the* " *beginning of his booke to the fifi chapter, and* BRITON, " *cap.* 28. *But this Court, in whoſe mannor ſoever it bee* " *kept, is accounted the* KING'S COURT, *becauſe the* " *authoritie thereof is originally belonging to the Crowne,* " *and thence derived to inferiour perſons,* KITCHEN, *fol.* 6.

" *Juſtice*

" the 2d booke of *Feuds*, cap. 53. upon
" which, if you read *Hotoman* with thoſe
" authors that hee there recordeth, you
" will think your labour well beſtowed.
" Read more of this, viz. what ARTI-
" CLES were wont to be inquired of in
" this court, in *Horne's Mirrour of Juſ-*
" *tice, lib.* 1. *cap. de la veneu des francs*
" *pleges*, and what theſe articles were in
" antient times, ſee *in Fleta.* lib. 2.
" cap. 52."

The

" *Juſtice* DYER *ſayth, that this* LEETE *was firſt derived*
" *from the ſheriffes* TURN, *fol.* 64. *And it enquired of all*
" *offences under high treaſon, committed againſt the Crowne*
" *and dignitie of the King; though it cannot puniſh many,*
" *but muſt certifie them to the Juſtices of the Aſſiſe,* PER
" STATUT. ANNO 1. ED. 3. CAP. ULT. KITCHEN. *f.* 8.
" *But what things be onely inquirable, and what puniſhable,*
" *ſee* KITCHEN *in the charge of a* COURT-LEETE, *fo.*
" 8–20. *See alſo the Statute,* ANNO 8. ED. 2. *The ju-*
" *riſdiction of bayliffes in the dutchy of Normandie, within*
" *the compaſs of their provinces ſeemeth to be the ſame, or*
" *very neare the ſame, with the power of our* LEETE,
" *cap.* 4. *of the grand Cuſtumary.*"

The title in *Horn's Mirrour* is not, as Dr. Cowell has ſaid, "*De la venue*," &c. but "*De Viewes de Franckpledge.*" See chap. i. ſect. xvii. This chapter contains many things worthy to be known, and which alſo relate particularly to the ſubject of this book, and therefore I think myſelf obliged to recite it for the ſake of thoſe who have not a copy of the original. In doing this, however, I propoſe to follow the common Engliſh tranſlation, printed in 1646, making ſuch alterations as a compariſon with the French copy, printed in 1642, may ſeem to require.

"*Of Viewes of Franck-pledge* *. *Of* "*theſe firſt aſſemblies it was alſo ordained,*

 "*that*

* This word is plural in the old Engliſh tranſlation but not in the French copy. Chap. 1. Sect. xvii. De Viewes de Frankpledge.

"*De celles aſſemblies primiers eſtoit auſſi ordaine que* "*cheſcun Hundredor fait common aſſemble un foits per an,*

"*et*

" *that every Hundred*"-er " *doe make a* " *common meeting once in the yeere,*" and " *not only of the Freeholders,*" (or Fief-tenants,) " *but of all persons within the* " *Hundred, strangers and denizens of the* " *age of* 12 *yeeres and upwards, except* " *of Arch-Bishops, Bishops, Abbots,* " *Priors,*" and all " *religious persons,* " *and all clerkes,*" (Clergy,) " *Earls,* " *Barons, and Knights, Feme Coverts,*" (rather, married women,) " *deaf*" and " *dumb, sick, idiots, infected persons,* " *and those who are not in any Dozein,*" (rather—" *and those who are elsewhere* " *included in a Decenary*"—for that is the proper exception intended,) " *to en-*

" *quire*

" *et nemy solement d' fief tenants mes d' touts del hundred* " *estrangers et Denizens d'* xii. *ans ensuis forprise Arche-* " *vesques, Evesques, Abbes, Priors, et touts gents d' Re-* " *ligion, et touts Clerkes, Countees, Barons, et Chivalers,* " *Femmes epouses, Sourdes et Mutes, Malades, Fols naistres*" (Idiots, or *Naturals* as they are sometimes called) " *et* " *Meseaux, et Ceux que*" (for *qui*) " *sont ailors en de-* " *zein,*

" *quire of the points aforeſaid, and of the* " *articles following, and not by villanies,*" (meaning *villeins* or bondmen [a],) " *nor* " *by women* [b], *but by the affermen*t" or verdict

" *zein, pur enquirer des points avant dits, et des* ARTI- " CLES *ſuivants, et nemy per* SERFS" [a i. e. the labouring Poor, enſlaved through the oppreſſion, pride, and injuſtice, of the rich *Landholders*, by whom they were called " *Serfs*," i. e. *Servi, Slaves*; but God will avenge (יעשה דין עני) " the cauſe of the oppreſſed " and the right of the poor." Pſalm cxl. 12.) " He " will ſave the oppreſſed poor, BUT WILL BRING " DOWN HIGH LOOKS." (Pſal. xviii. 27.) And " he " that oppreſſeth" (ὁ ἀδικων κομιειται ὁ ηδικησε· και ουκ ἐστι προσωπολημψια) " ſhall receive" i. e. retribution " for the oppreſſion which he hath done, and there is" (with God) " NO RESPECT OF PERSONS." Col. iii. 25.] "*ne per* FEMES" [b i. e. the *averement*," verdict, or judgement, was not to be found by *women*, though they might undoubtedly be *witneſſes*, and give information to the Court to aſſiſt the " *averement*:" and, by the expreſs exemption (but not excluſion) of married women, "*femmes epouſes*," it ſeems as if the attendance was required of *all other women* not ſo exempted, viz. the *unmarried*, who, ſurely, may be included in the general term—*d' touts del Hundred*, " *of all perſons within the Hundred*,"—eſpecially as their attendance to hear the charge concerning the ſeveral legal ARTICLES OF ENQUIRY would enable them more effectually to promote, by their influence, that love

verdict of TWELVE[c] "*Freemen at* "*the leaſt; for a villaine*" (meaning a villein, i. e. a bondman or ſerf[d]) "*can-* "*not indict a Free-man*[e], *nor any other* "*who*

love of *right* and *juſtice*, for which the virtuous part of the ſex are moſt eminently diſtinguiſhed; and their better knowledge of the *Common Law* would enable them *ſometimes*, perhaps, to prevent the breach of it, but, *at all times*, enable them to aid it by true and candid information in behalf of RIGHT] "*mes per le* AFFEREMENT *d'* xii. *Frank homes al meins*" [c the tranſlator has unluckily omitted this moſt material circumſtance concerning "*a Jury of* TWELVE at the leaſt") "*car* "*Serf*" [d there are now no *Serfs* (God be thanked!) in England, though a ſtrenuous attempt was made ſome years ago to engraft the deteſtable Weſt-Indian *ſlavery* on the old rotten ſtock of *villenage*, which it pleaſed God to enable me to cut up by the roots, contrary to my own expectation or even hope, being at that time utterly ignorant of law, having never till then opened a ſingle book of it, but I was compelled by a particular unforeſeen circumſtance to ſearch the books in mere *ſelf-defence!* But, though there are now no *Serfs*, yet the doctrine of this article holds good with reſpect to all perſons under confinement, or ſentence, or *charge*, for crimes, who are to be deemed *bondmen* (though not *Serfs* or *private property*) till they are enlarged] "*ne* "*poit nul Frank-home*" [e and *every man*, not charged with crimes, is to be deemed a *freeman*] "*enditer, ne* "*nul auter qui n'eſt reſcetivable a ſuite faire en meſme les* "*Courts.*"

" *who is not receivable to doe ſuite in*" the ſame[f] " *Courts, and therefore it was* " *anciently ordained; that none ſhould re-* " *maine in the realme if he were not in* " *ſome Decenny*" (or Tithing) " *and* " *pledge*"-ed " *of Freemen: it belongeth* " *alſo to* HUNDREDOURS" (the chiefs of *Hundreds*, who are High-Conſtables) " *once a year to*" view[g] " *the Frank-* " *pledges, and the pledg*"-ed,[h] " *and there-* " *fore*

" *Courts.*" [f In the Old Verſion it is rendered " *in-* " *ferieur Courts:*" the tranſlator probably ſuppoſed the true reading to be *meſ'n*, or *menues*, *meen*, little or inferior Courts, but the word is *meſme.*] " *Et pur ceo que* " *ordeine fuit auncientment que nul ne denuoraſt*" (probably for *demeurât*) " *en le royalme s'il ne ſoit en* DIZEIN; *et* " *plevy de Frankhomes; appent aux* HUNDREDORS *d'* " *viewer*" [g in the Old Verſion it is rendered *to ſhew*] " *un foits per le an les Frankpledges, et les plevies;*" [h in the Old Verſion rendered *pledgers*, but the *Frankpledges* themſelves are the *pledgers*, who pledge, not only each other, but alſo all the lodgers, journeymen, ſervants, &c. that are *not houſekeepers*, in each Tithing, and theſe latter are properly the *plevies*, or *pledged*, and are ſo diſtinguiſhed from the 10 FRANKPLEDGES or DECINERS; " *et pur ceo ſont tiels views appelles views d' Frank.* " *pledge.*"

" *Les*

" *fore are the viewes called the View of* " *Frankpledges*;" or rather, *and for this are ſuch viewes called the Views of Frankpledge.*

" The Articles[1] are theſe."

1. " *By the oathes you have taken,* " *you ſhall declare whether all they* " *who ought, doe appeare or not.*" In the ſuppoſed Statute of 18th Edward II. before-mentioned, the firſt article is,— " *You ſhall ſay unto us, by the oath that you* " *have made, if all the* JURORS *that owe* " *ſuit to this Court be come, and which* " *not.*" In both copies the preſence of the JURY is neceſſarily to be underſtood,

" *Les Articles ſon ceux.*" ([1] The *Articles* are ſuitable to *Court-Leetes* as well as *Views of Frankpledge:* they are the principal heads or topics of enquiry to be mentioned in the charge of the *Hundreder*, or Chief of the Court, to *the Jury.*)

1. " *Vous nous dires par vous ſeremens ſi tres tous ſont* " *qui la devoient venir a la jornee.*"

2. " *Si*

ſtood, as appears by the mention of their oaths, and of courſe we muſt ſuppoſe a previous ſummons, or *impannel*, to be the foundation of the buſineſs, ſo that it now ſeems a very proper queſtion to begin with, as well at *Views of Frank-ledge* as at all other *Court-Leets*, or *Trithings*, and, likewiſe, at *Hundred-Courts*, viz. "*If all the* JURORS *be come*, "&c. *and which not?*"—That the abſentees may be duly *amerced* if they cannot aſſign a legal *eſſoine*, or admiſſible excuſe.

2. "*If all the Free-men*[k] *of the* HUN-"DRED, *or of the Fee*," (Fief or Manour,) "*be preſent.*"

2. "*Si touts les Franks*" ([k] *Franks* in ancient times were mentioned in contradiſtinction to *Serfs*; but, as *villenage* is now aboliſhed, all men of every rank and degree are to be deemed *Franks*, or *Free-men*, in the Congregational Courts) "*des Hundreds ou del fief ſont* "*preſent.*"

3. "*Si*

3. " *If all the Frankpledges*" (or, rather, the *Chief Pledges*[l], Tithingmen, or Headboroughs) " *have their Dozeins*" (Decenaries or Tithings) " *entire,*" (or complete,) " *and all thoſe*" *whom they have pledged.*

4. " *If all thoſe of the* HUNDRED, " *or of the fee,*" (or fief,) " *of the* " *age of* 12 *years and above, have* " *ſworn fealty to the King*[m]; *and of the* " *receivers*

3. " *Si touts les Frankpledges eient lour Dozeins entiers.* " *Et touts ceux que ils ont plevies.*" ([l] This interpretation anſwers to N° 5, in Fleta's 52 chap. lib. 2. which I believe to be the true reading, inſtead of " *Frank-* " *pledges.*" —— " *Si omnes* CAPITALES PLEGII " *venerint ſicuti venire debent, et ſi* DECENNAS *ſuas* " *habuerint.*" See alſo the ſuppoſed Statute of 18th *Edward* II. N° 2. " *If all the* CHIEF PLEDGES, or " their Dozens, be come, *as they ought to come, and* " *which not.*")

4. " *Si tres touts ceux del Hundred ou del fief d'* xii. *ans* " *enſuis ſint jure fealtie al roy, et de reſceivors d'autres* " *eſcient.*" - ([m] To tender the oaths of allegiance to boys of 12 or even 14 years of age ſeems very exceptionable, and therefore I am happy to find that this does not ſeem to have been originally intended to be required;

" *receivers* [n] *of others wittingly*", or knowingly.

P 2 5. " *Of*

required; for, by the copy of this article in Fleta, all that is required of ſuch very young perſons is their being entered and pledged in ſome Decenary.—" *Item* " *ſi omnes duodecim annorum et ultra ſint in Decenna.*"— Enquiry ſhould alſo be made whether all perſons of that age attended the *View of Frankpledge* as they ought. See Fleta, No 8. " *Item ſi omnes* DUODECIM ANNORUM *et* " *ultra venerint ſicut debuerint.*" This correſponds with the 3d Article of the ſuppoſed Statute of 18th Edward II. as expreſſed in my old Edition of 1529. " *Et ſi toutz* " *de* DOUZE ANS *ſont en l'aſſiſe noſtre ſeigneur le roy et* " *queux ne ſont mye, et qui les reſceite.*" Which is falſely rendered in the common verſion, viz. " *And if all the* " DOZEINS" (inſtead of all DE DOUZE ANS or of 12 years) " *be in the aſſiſe of our Lord the King,*" (the *View of Frankpledge being that aſſiſe,*—" EO QUOD DIES " REGIS EST, becauſe it is the King's day," as Fleta ſays, No 36, " et in favorem pacis fuit inventus,") " *and which not, and who received them,*" i. e. in what houſeholds they are lodged: [n] and the remaining part of the article is alſo better explained in *Fleta* concerning " *Receivers of others*" by another diſtinct article, (No 7,) " *De hiis qui non ſunt in* DECENNA, *qui fuerint* CLE- " RICI, *qui* MILITES, *qui foriſfamulaverint, et qui* " *alii, et de quorum manupaſtu fuerint. Et ſi qui fuerint* " *vagantes, de quibus habetur aliqua præſumptio vel ſuſ-* " *pitio mali,* TUNC DE EORUM RECEPTORIBUS.)

5. " *D'*

5. "*Of all blood*" feloniouſly "*ſhed,*" [to which I will add a neceſſary article of enquiry from the imaginary ſtatute of 18th Edward II. viz. "*Of*" (any) "*wound made*"—"*et de play fait*"—(Edit. of 1529)—which in the common verſion is falſely rendered—"*and of* "*frays made*"—however, even *frays*, though there be no wounds in conſequence of them, may, *as breaches of the peace*, be puniſhed by the *Common Law*, which is competent to find effectual *remedies*

5. "*D' tout* SANKE *pecherouſement eſpandue, de* HUY "*et* CRY *levy a tort; ou a droit, levee et nient ſuivit* "*duement, et des noſmes d' ceux que encurruerent d' touts* "*mortalx pecheors en touts eſpeces; come des principals et des* "*acceſſories.*" This article is differently expreſſed in Fleta, See N° 9. "Item de burgatoribus, robbato-"ribus, et latronibus, falſariis, HOMICIDIS, com-"buſtoribus domorum, et eorum fautibus, et RE-"CEPTORIBUS." His 13th article may alſo be placed here very properly,—"*Item de mahematoribus,* "*et vulneratoribus, impriſonatoribus, et aliis contra pacem* "*terræ facientibus.*" The enquiries concerning *Hue and Cry* are expreſſed in another diſtinct article in Fleta.

(See

remedies for *all immoralities* and *nuiſances*,] "*of hue and cry wrongfully leavied,* "*or rightfully leavied, or rightfully leavied and not duly purſued, and of the* "*names of*" thoſe who purſued; "*of* "*all mortal*" ſinners of all kinds; as of the principals alſo of the acceſſories.

6. "*Of all exiles, outlaws, waives,* "*and baniſhed perſons returned, and* WHO "HAVE SINCE RECEIVED THEM, *and* "*of thoſe who have been adjudged to death* "*or abjured the realm.*"

7. "*Of*

(See N° 16.) "*Item de huteſiis levatis injuſtè; vel ſi juſtè,* "*tunc non proſecutis, qui ea levaverint,*" (this was to prevent falſe alarms by wanton people,) "*et per quos* "*deficit ſecta.*" This is the 17th article of the ſuppoſed Statute of 18th Edward II. "*Des* HUES *levis* "*et nient purſues.*" "*Of* CRIES *levied*" (or raiſed) "*and not purſued.*" And the articles concerning *houſebreakers* and common thieves are the 12th and 13th of the ſaid ſuppoſed Statute, viz. "*Of breakers of* "*houſes and of their receivers; of common thieves and of* "*their receivers.*"

6. "*De tout exuls, utlagies, weives, et banniſe retornes,* "*et que*" (for qui) "*ont eux puis recettes, et de ceux* "*que*" (for qui) "*ont ete condemnes a la mort ou for*

"*jures*

7. " *Of*" Chriſtians (that are) " *uſu-*
" *rers and of all their goods* [o]."

8. " *Of treaſure trove*," (i. e. found.)
" *wrecks, waifes, eſtreyes, and of every*
" *purpreſture and encroachment* [p] *upon the*
" *King, or upon his dignity.*"

9. " *Of*

" *jures le Royalme.*" Compare this with Fleta, N° 10. " *Item de utlagatis vel abjuratoribus regni reverſis, et de* " *eorum bonis et* RECEPTORIBUS." And with N° 20 of the articles of 18th Edward II. " *Of perſons* " *outlawed returned, not having the King's warrant.*"

7. " *De Chriſtians uſurers, et d' touts leurs biens* [o]." The *Jews*, it ſeems, were the only people, at that time, permitted to practiſe *uſury*; but no diſtinction is expreſſed in Fleta, ſee N° 14. in which ſome other articles of enquiry are added. *Item de* USURARIIS, *Sortilegis, Apoſtatis, Traditoribus, et eorum catall' et* RECEPTORIBUS.

8. " *De treſure trove*," (ſee alſo 23d article of the ſuppoſed Statute of Edward II.) " *wrecks, waifs, eſtrayes, et* " *d' cheſcun purpriſe et occupation fait ſur l' Roy ou ſur ſa* " *dignity* [p]." All encroachments upon public *ſtreets*, or upon *highways*, (by land or by water,) are to be deemed *purpriſe*, or encroachment, upon the King. In Fleta this article is different in ſome particulars. See N° 11. " *Item de* THESAURO INVENTO, *murdris, et* " *weyvio proſecuto retento.*" See alſo N° 25, " *Item* " *de purpræſturis ſuper Regem vel dominum factis.*"

9. " *De*

9. "*Of all wrongs done by the King's* "*officers and others to the common people.*"

10. "*And all purpreſtures*" (or private encroachments) "*in*" (any) "*place*" (that is) "*common,*" (or belonging to the public,) "*in the land or in the water,* "*or elſewhere*[q]."

11. "*Of*

9. "*De cheſcun* TORT *fait per les miniſtres l' Roy, et* "*autres al cominaltie del people.*"

10. "*Et des pur preſtures fait en lieu comon, en terre,* "*ou en eawe, ou aillors*[q]." This article alſo, as well as N° 8, includes the enquiries for encroachments on *ſtreets, roads, rivers,* &c. as being places that are *common* or *public*; but in Fleta this enquiry is ordered by a diſtinct article. See N° 20. "*Item de viis et* "*ſemitis injuſtè obſtructis vel arctatis.* Thus, not only the *obſtructing,* but alſo the *contracting* or *narrowing,* of roads and paths is to be guarded againſt by the Court of Frankpledge. See alſo what is called the Statute of *Frankpledge.* (18th Edward II.) "*Des* "*voies et Semites amenues*" (diminiſhed or contracted) "*ou eſtoppes,*" (or ſtopped up.) And alſo the three preceding ſentences relating to encroachments, viz. "*Des* "*purpreſtures faitz en terres, boys, et en eawes a nuſance.* "*Des mures, meaſons, foſſes, et hayes leves ou abatus a* "*nuſance. Des boundes juſtreitz et emportes.*" And then follows the former quotation. "*De voies et Se-* "*mites amenus ou eſtoppes.*" Enquiries which ſhould never

11. "*Of boundaries removed to the* "*common nuſance of the people.*"

12. "*Of every breach of the aſſiſe of* "*bread, beer, wine, clothes, weights,* "*meaſures, beams, buſhels, gallons, ells,* "*and yards, and of all falſe ſeals, and of* "*thoſe who have uſed them.*"

13. "*And*

never be omitted. See the Common Verſion in the Statute-book, articles No 7, 8, 9, 10, and 11, viz. "*Of purpreſtures*" (encroachments) "*made in lands,* "*woods, and waters to annoyance. Of walls, houſes,* "*dikes,*" (or rather *ditches,*) "*and hedges, ſet up or* "*beaten down to annoyance. Of bounds withdrawn and* "*taken away. Of ways or paths opened or ſtopped.* "*Of waters turned, or ſtopped, or brought from their* "*right courſe.*" Moſt of which articles are expreſſed in the before-cited chapter of Fleta, No. 18 and 19. "*Item de aquis treſtornatis vel obſtructis. Item de foſſatis,* "*muris, calceis, ſtagnis, vel hujuſmodi ad nocumentum* "*levatis, proſtratis, vel exaltatis.*"

11. "*Des boundes removes a common nuſance.*" In Fleta, No 17, may anſwer to this, as the diviſions there mentioned include *bounds of diviſion* as well as common fences. "*Item de* DIVISIS *fractis, remotis, vel mino-* "*ratis.*"

12. "*De cheſc. aſſiſe enfreint d' paine, cervoiſe, vint,* "*draps, poys, meſures, trones, bouſſeaux, gallons, ulnes,* "*et tolheps, et d' touts faux ballances, et que les ount* "*uſees.*"

13. " *And of thoſe who have bought by* " *one kind of meaſure, and ſold by another* " *kind, in deceit of merchants, or buyers.*"

14. " *Of the diſturbers of framing* " *lawfull judgements, and of the framers* " *of wrongfull judgements, and of the* " *abbettors and conſenters thereunto.*"

Q 15. " *Of*

" *uſees.*" The ſame in ſubſtance with Fleta, No 21 and 27. " *Item de falſis menſuris et ponderibus, et rectas* " *aſſiſas Regis violantibus.*"—" *De violatoribus aſſiſæ* " *panis, cerviſiæ, vini, et pannorum.*" And, in the articles of 18th Edward II. the ſubſtance of this is included in three articles, No 24, 25, 26, viz. " No 24. *Of the aſſiſe of bread and ale broken.* No 25. *Of* " *falſe meaſures, as of buſhels, gallons, yards, and ells.* " No 26. *Of falſe balances and weights.*"

13. " *Et qui ont achaty per un manier d' pois et de me-* " *ſures, et vendue per autre manner en fraude des mer-* " *chants.*" This article is No 27 in the *ſuppoſed* Statute, " *Of ſuch as have double meaſure, and buy by the great,* " *and ſell by the leſs*;" apparently meaning, meaſures which are *nominally* the ſame, but *various in ſize* to gain undue advantage both in buying and ſelling.

14. " *Des diſtourbes des forniſſements des loyalx judge-* " *ments, et d' forniſſors de forceous, et des aſſeſſors, et con-* " *ſentants.*"

15. " *De*

15. "*Of every wrongful detinue*" or detaining "*of the body of a man, or other* "*diſtreſſe,*" *taking*[r], or arreſt, whether of body or goods.

16. "*Of every falſe judgement given,*" for the other view[s], (meaning, perhaps, a retroſpect to the preceding view,) "*in* "*the Hundred or Fee.*"

17. "*Of every fore-ſtallment done in the* "*common highway.*"

18. "*Of*

15. "*De checun torceous detenue d' corps de home, ou* "*d' autre naam*[r]." *Naam*, or *næme*, is Saxon for a *taking* or *ſeizing* any perſon. Hence the "*Capias in Wither-*"*nam,*" from *næme*, captio, and *wither*, contra, a writ of *repriſal*, to *take* either the *body* or the chattels of any oppreſſor who ſhould be juſtly ſuſpected of having *taken* and concealed any perſon in private durance, or to *take* the goods of thoſe who had unjuſtly ſeized the goods of others, until reſtitution and ſatisfaction ſhould be made.

16. "*De cheſcun faux judgement dont pur l'autre view* "*en le Hundred, ou en le fief*[s]." In the old verſion this is rendered "*given by the view in the other Hundred,*" which does not ſufficiently agree with the original French, and there is no correſponding article in *Fleta* to enable me to find a more ſatisfactory rendering.

17. "*De cheſcun forſtall faits en le common chemin.*"

18. "*D'*

18. "*Of*" all "*wrongfull replevies*;" i. e. either for regaining poſſeſſion of goods that have been duly diſtreined, or for the *bayling*, and ſetting at liberty, men that have been duly committed to priſon. This ſeems a very *proper article of enquiry*, though it is not obvious at firſt ſight how it can be deemed a tranſlation of the article as expreſſed in the French copy[t] of *Horn*; but in the falſe

18. "*D' touts torceous vēēs*[t]." This word being *abbreviated*, I can only gueſs (like the former tranſlator) at the word intended to be underſtood. *Vēēs* may be an abbreviation for the plural of *veue*, the proper French word for *viſus*, a *view*, and may refer to the "*wrongful views*" mentioned in article 16, i. e. to any *falſe judgements* that may have been given in the *preceding views*. "*Torceous veues*" may alſo ſignify partial or "*favourable inqueſts taken by the ſheriff*;" and, ſo alſo, if the word intended ſhould be *venues*, torceous *venues*, meaning PACKED JURIES, or juries not duly choſen out by oath from the proper *vicenage*, &c. whereby the ſheriffs were enabled to *replevie*, or *bail*, malefactors that otherwiſe were not *bailable*; and, in this ſenſe, the word "*veues*" alſo anſwers to the tranſlation given above. As a remedy to ſuch "*wrongful views*,"

or

Statute *of Frankledge* there is an expreſs article for it, viz. "*Des gentes em-*
"*priſonnes, et puis leſſes ſauns garauntie.*" See N° 32 in the Engliſh copy of 18th Edward II. "*Of perſons impriſoned, and*
"*after let go without mainpriſe,*" i. e. without finding ſureties, either as *bail* for their appearance, or as ſecurities for the peace, and their future good behaviour.

19. "*Of*"

or "*favourable inqueſts,*" the 11th chapter of *Weſtminſter Primer*, or 3 Edward I. A. D. 1275, cap. 11. is expreſsly ordained. In my old edition of 1529 (beforementioned) it will be found in the 12th chapter. And in the 16th chapter of that edition of the *Primer* (in the common edition, chap. xv.) particular directions are given to diſtinguiſh the ſeveral caſes wherein *bail*, or *replevin*, may be lawfully given or lawfully refuſed; and that chapter is copied, not only at *length*, but even with ſome *additions* by Fleta in his uſeful chapter, concerning the *Shiriff's Turns* and *Views of Frankpledge*, to which I have ſuch frequent occaſion to refer on this ſubject. He alſo directs a diſtinct article of enquiry, concerning *bailable perſons detained, and unbailable perſons diſmiſſed.* See No 29. "*Item de replegiabilibus in-*
"*juſtè detentis, et irreplegiabilibus dimiſſis.*"

19. "*D'*

19. " *Of*" all " *wrongful recouſſes*," or reſcues".

20. " *Of every outragious diſtreſſe in* " *another fee*, (or manour,) " *or in the* " *market for a forraign contract.*"

21. " *Of all bridges broken, and cauſies,* " *wayes, common bridges, and who ought* " *for to repaire them.*"

22. " *Of the makers of cloathes dwelling* " *out of great towns in places forbidden*," and " *of tanners and of curriers of lea-* " *ther.*"

19. " *D' tous torceous reſcouſes* ," or " *reſiſtance againſt* " *a lawful authoritie;*" (ſays Dr. Cowell,) " as, for " example, if a baylife or other officer upon a writ " doe arreſt a man, and another, (one or more,) by " violence, doe take him away, or procure his eſcape; " this act is called a RESCUS." In the ſuppoſed Statute of 18th Edward II. the 19th article ſeems to have the ſame object of enquiry, viz. " *Of eſcapes of thieves or* " *felons.*"

20. " *D' cheſcun outragious diſtreſſe ou en autre fee, ou* " *en market pur forreign contract.*"

21. " *D' touts* PONTS *rompues et* CAUSIES, *et chemins,* " *common bridges, et qui les doit repaire.*" See alſo No 33, in Fleta. " *Item de* PONTIBUS *et* CALCETIS " *fractis.*"

22. " *Des*

" *ther.*" This article is very different from the French original, as well as from Fleta, and the ſuppoſed Statute of Edward II. and it is not eaſy to trace from any, or all, of theſe copies what has been originally intended. According to the old copy of the Myrrour it ſhould be " *of the dreſſers* (or patchers) " *of old cloths dwelling*" &c.[w] as if the object was to prevent a ſecret vamping-up of old, unſaleable, or damaged, clothes in order to paſs them for new. In the articles of 18th Edward II. (N° 30,) it is " *of cloth-ſellers and curriers of lea-*" *ther*[x] *dwelling out of merchant-towns*," which I ſhould ſuppoſe to reſpect rather the

22. " *Des addoubèrs de viels draps demorrants hors de* " *grands villes en lieux defendues*[w]."

" *Des tannors et blancheors d' quirres. Et d' main* " *curriers.*" I have joined theſe three ſentences under one article, or head, of enquiry, becauſe I find them ſo connected in the ſuppoſed Statute of 18th Edward II. " *Des vendours des draps et curriours des quirs* " *aillours que en villes marchandes*[x]."

the *markets* than the *dwellings* of the *cloth-ſellers* and *curriers*, viz. that all wholeſale dealing in *cloths* and *leather* ſhould be at public markets, eſtabliſhed in great towns like the famous *cloth*-markets at Leeds and Halifax, and like the great *leather*-market in *Leadenhall*, that proper market-prices may be regularly aſcertained and known for the common benefit of the manufacturers as well as merchants.

And, if this be really the intention of the article, it will enable us the better to underſtand how far a man was formerly prohibited from exerciſing two ſeveral trades, viz. not any two trades in general, but only ſuch trades as are ſo particularly connected together, that the exerciſe of both by one man might, in ſome degree, affect the public markets and (like *foreſtalling*) prevent the fixing of regular

regular market-prices; and even this *limitation* muſt be *limited* to ſuch trades only which may affect the *neceſſary articles of life*; for, ſo, I think, we may underſtand the examples recited by Fleta; "that the *ſhoe-maker*" (and, of courſe, all other conſumers of *leather*, the *ſadler*, the *breeches*-maker, the *glove*-maker) "*ſhall not be a tanner*," (for, otherwiſe, the proper market-price for *leather* could not be ſo eaſily aſcertained,) "*nor the* "*tanner a butcher*," (which would injure the *fell*-market for *pells* and *hides*, and would give him an undue advantage over other tanners,) "*nor the buſineſs of a* "*taylor*" to be exerciſed (perhaps) by a *clothier*, or manufacturer of cloth, which would injure the *cloth*-markets; but of this laſt article I am uncertain; for, I acknowledge that I do not underſtand what is meant by the abbreviated words

in

in the original[y], and no article of enquiry ought to be formed on a *doubtful* queſtion.

23. "*Of butchers*," and thoſe "*who "ſell unwholeſome fleſh for that which "is ſound.*" And tainted or "ſpoiled" (either through too long keeping or want "of cleanlineſs[z]) "for well-conditioned."

24. "*Of all thoſe who ſell corrupt "wine for ſound wine.*"

[y] See Fleta, the ſame chapter, No 35. "Item de "abbatoribus coreorum, præterquam in civitatibus et "burgis, et etiam de his qui duobus utuntur officiis, "videlicet ſutoriæ, et tanneriæ, vel tannariæ et car-"nificis, vel officio ſciſſoris et dub', et etiam dub', "præterquam in burgis et locis communibus; et plures "ſunt articuli."

23. "*Des bochers et queux vendent chair ſuffiſant par "ſane, et gaſtine par bien cis.*" [z] Thoſe butchers who *blow up meat with their breath* are preſentable, (according to Mr. Robert Powell's *treatiſe of the antiquity, authority, &c. of the ancient courts of Leete, &c.* p. 214.) and, of courſe, are *finable*.

24. "*De ceux qui vendent vine per y pur ſane.*"

25. "*Et*

25. "*And*" (of thoſe who ſell) "*beer*" (or) "*ale, raw, and not well* "*brewed, for that which is good and* "*wholeſome.*"

26. "*Of ſmall larcines,*" or thefts, commonly called "*petit larceny,*" when the goods ſtolen do not exceed the value of twelve-pence.

27. "*Of*

25. "*Et ſervoiſe crue ou rouſſe ou de feves*" (or made of beans) "*ou deceraie*" (perhaps for de cerelle, a ſort of perry) "*pur covenable et ſane.*"

26. "*Des mennes larcines.*" In the articles of 18th Edward II. ſome particular kinds of petty thefts are ſpecified. (N° 14.) "*Des petitz larons come des owes,* "*ſelyns, ou garbez.*" (No 15.) "*Des larons queux* "*ſakent draps ou garbes.*" Which, in the common verſion, are rendered, "No 14. *Of pety larons, as* "*of geeſe, hens, or ſheaſi.* No 15. *Of thieves that ſteal* "*clothes, or of thieves that do pilfer clothes*" (to which the tranſlator has added) "*through windows or walls;*" as if he underſtood "*garbes*" to bear a different ſenſe from *garbez* in the preceding ſentence, ſignifying *gerbes*, or *ſheaves*, of corn, but to mean literally *garbes*, garments, clothes, ſhirts, or any part of our *garbe* or dreſs, which thieves might be tempted to pilfer from open *windows*, *walls*, &c. Fleta has this article of *petty larciny*, but he has prefixed to it the article of

cutters

27. "*Of cutters of purſes.*"

28. "*Of thoſe who ſuffer people to uſe*" "*any myſterie for reward or fee.*"

29. "*Of receivers of thief-boot,*" i. e. receivers of "*ſtolen goods.*"

30. "*Of cutters of purſes,* whoſe crime, when they do not fail in the attempt, can ſeldom be ranked as *petty larciny,* unleſs we may uſe the term of *cut-purſe* to be applicable to all thoſe petty villains whom we commonly call "*pick-pockets*" See Fleta, No 15. "*Item de ſciſſo-*" "*ribus burſarum, et latronibus de modicis latrociniis,*" "*aucarum,*" (of geeſe,) "*garbarum,*" (of ſheaves,) "*pannorum,*" (of clothes,) "*et hujuſmodi.*"

27. "*Des ſciſſors des burſes.*"

28. "*D' ceux qui les ſuffrent uſer lour meſtier pur loier.*" "*Of thoſe who ſuffer*" (other) "*perſons to exerciſe their*" "*trade for hire.*" This perhaps may relate to the ſeveral particular branches of trade before mentioned, (in p. 127 and 128.) *two* of which cannot lawfully be exerciſed by any one perſon for the reaſons before aſſigned. And this article may be intended to deter tradeſmen in any of theſe branches from permitting tradeſmen of different branches from carrying on the prohibited union of trades, in their name, for hire.

29. "*D' pernors d' theſeboot,*" probably the ſame kind of perſons may be intended by "*the redeemers of*" "*robbery*" mentioned in Fleta. See No 30. "*Item*" "*de redemptoribus latrocinii.*"

30. "*D'*

30. "*Of makers and haunters of false* "*dice.*"

31. "*Of outrageous tole-takers,*" i. e. those who take more *toll* than the law directs.

32. "*Of all other*" cheaters (or tricksers) and "*deceivers.*"

33. "*Of all manner of conspirators.*"

34. "*And of all other articles available* "*able for the destruction of offenders.*"

"*And the presentments are to be sealed*" (continues the author of the Myrrour) "*with*

30. "*D' fesors et hauntors d' faux dice.*"

31. "*D' outrageous tolners.*"

32. "*D' touts trecheors et deceivers.*"

33. "*D' touts manners conspirators.*"

34. "*Et de touts autres articles qui valer purront a* "*pecher destruer.*" This article must, of course, include all the other articles mentioned by Fleta, and also in the articles of Edward II. though they are not particularly mentioned in the *Myrrour.*

"*Also of the breakers of gaols, the ravishers of women,* "*and the seducers of wives, and of nuns,*" or single women. (No 12.) "*Item de fractoribus goalarum, rap-* "*toribus mulierum, et abductoribus virorum et monalium.*"

In

" *with the ſeals of the jurors, ſo that* " *none, by fraud, doe increaſe or diminiſh* " *them*;

In the articles of 18th Edward II. " No 21. *Of women* " *raviſhed not preſented before the coroners.*" " *De rape* " *de feme qui n'eſt my preſent devant le coroner.*" Which ſhould rather be rendered. " *Of the rape of woman* " *which is not preſented before the coroner.*" This includes not only the deteſtable acts of violence, which alone is expreſſed by the former rendering, but alſo the ſeduction or carrying off a minor even with her own conſent, which in law is deemed a *rape* becauſe of the nonage. The old Saxon laws puniſhed every laſcivious affront, or impudent incivility, to women, which might be deemed a leading ſtep to greater injuries, by proportionable *amerciaments*, which the *Court-Leets* and *Views* may ſurely reſume, if they pleaſe, in favour of *morality*, to vindicate the juſt rights of modeſt women, and to promote honourable marriage, which is notoriouſly hindered by the prevalence and facility of whoredoms, and by the general neglect of doing juſtice to poor, injured, helpleſs, girls*, by puniſhing their ſeducers,

* It is unreaſonable and unnatural that all the difficulties and ill conſequences of temptation between the youth of both ſexes ſhould be cruelly laid upon the *weaker veſſel*, whereby ſhe is too often irrecoverably loſt, and added to the pitiable ſwarms of wretched female ſeducers to revenge her injury on the other ſex by the communication of a loathſome diſeaſe, till her wretched career in the ſervice of Satan is cloſed by a miſerable and hopeleſs death! The *marriage-act* has greatly added to the promotion of thoſe evils, by taking away the force of contracts, and other circumſtances of the *common law*, that was favourable to the caſes of injured young women, and this merely to indulge the unreaſonable pride of families!

" *them; and that which cannot be re-*
" *dreſſed there by theſe preſentments is*
" *preſentable at the ſheriffes firſt turne;*
" *and thoſe things which the ſheriffes*
" *cannot redreſſe are to be preſented by the*
" *ſheriffes into the exchequer.*"

" *All*

ducers, who, in ancient times, would have been compelled to marry them.

The coroners were particularly required to vindicate the rights of females by enquiring after *rapes*, as appears by the laſt quotation from the articles of 18th Edward II. This circumſtance is not mentioned in Fleta, though we there find a diſtinct article reſpecting coroners, in which, however, this crime, as being a *felony*, muſt neceſſarily be included.—" *Item de feloniis* " *quorum clamor non pervenit ad coronatores.*"—" *Alſo* " *concerning* FELONIES, *the cry of which did not reach* " *the* CORONERS." The *rights* of the crown ought alſo to be enquired after at the *torns* of the ſheriffs, and at *Views of Frankpledge*, (and undoubtedly alſo at other *Leets*,) not only of *alienations* of land, &c. but alſo of *eſcheats* of every kind, and of the *fines*, *amerciaments*, and other profits, of theſe popular courts, which, howſoever they may have been granted to private lords of manours, may always be reſumed according to the true, *legal*, doctrine of "*nullum tempus occurrit Regi*," as *res fiſcalis*, a branch of the public revenue, which ought never to be ſold or transferred by any King to another perſon, being " *res quaſi ſacra quæ dari non poteſt, nec*

" *vendi*,

" *All thoſe who are preſent d for any*
" *offence which is mortall, and baniſhed*
" *perſons who are returned, and their*
" *receivers, and thoſe who are not in*
" *allegiance under the King, are to be*
" *ſeiſed upon, and their goods to be ſeiſed*
" *into the King's hands.*"

" *And*

" *vendi, nec ad alium tranſferri a principe vel a Rege*
" *regnante*;" whereas it is otherwiſe in the alienation of *lands, tenements,* &c. in which, " *tempus currit*
" *contra Regem ſicut contra quamlibet privatam perſonam,*" as I have ſhewn in a diſtinct tract on that doctrine. But the *more ſacred* branches of the public revenue, thoſe which are properly *res fiſcalis,* ſhould be carefully enquired after; for, if they were duly levied and paid into the exchequer to the public accompt, they would conſiderably augment the national treaſure without *burthening* the people, nay, they would be really, on the contrary, *profitable* to the people, not only in a *moral* ſenſe, by reſtraining vice of every kind, but alſo in *pecuniary* advantage, by lowering the *poor's rates,* and by aiding the national treaſury, in ſo eſſential a manner as would render leſs taxes neceſſary.

The 22d article in Fleta charges the *Leet*-juries with the conſervation of the rights of the crown. " *Et ſi in*
" TURNIS VICOMITIS *vel* VISIBUS HUNDREDARUM
" *tunc ſic, de jure regis relato, vel alienato in terra, vel*

" *in*

" *And although it be ſo that the bailiffe*
" *cannot heare and determine any action*
" AT THE LEETE," (in the original it
" is "A LA TORNEE,") " *neverthelesſe*
" *if any one preſent be grieved by any*
" *wrongfull*

" *in mari, per quem fuerit alienatum, vel celatum, et a*
" *quo tempore.*"

Notice ſhould alſo be taken of any *new* cuſtoms, or uſages, ſet up either in land or water. See Fleta, N° 32. " *Item de* NOVIS *conſuetudinibus in terra vel in* " *aqua levatis.*" To which ſhould alſo be added a ſtrict enquiry after *old cuſtoms* and *uſages* withdrawn, eſpecially of thoſe which were due to the *popular* courts. See the articles of 18th Edward II. N° 6. " *Of cuſ-*
" *toms and ſervices, due to this court, withdrawn, how,*
" *and by whom, and in what bailiff's*" (or hundreder's)
" *times.*" There are a few other circumſtances of enquiry peculiar to the articles of 18th Edward II. viz. " *De ceux queux veunt en meſſage de z larons.*" See N° 16 in the common verſion. " *Of ſuch as go in meſſage for*
" *thiefs.*" N° 22. " *Of clippers and forgers of money;*" (fauſeours de la money;) rather *falſifiers* of money. N° 28. " *Of ſuch as continually*" (rather " *aſſiduouſly*" — " aſſiduelment") " *haunt taverns, and no man*
" *knoweth whereon they do live,*" or " *from whence this*" (expence) " *comes;*" " *et home ne ſyet dount ceo vint.*" N° 29. " *Of ſuch as ſleep by day, and watch by night,*
" *and fare well, and have nothing.*" No 31. " *Of ſuch*
" *as flie unto church or church-yard, and after depart*
" *without*

" *wrongfull preſentment, and complain*
" *thereof; or if the Bayliffe or Steward*
" *have a ſuſpition that the Jurours be, in*
" *ſome caſe, perjured, by concealing of any*

S " *offence*

" *without doing that which belongeth thereunto.*" The latter part of this ſentence is differently expreſſed in the original, viz. " *Et puis ſen vount ſauns faire l'aſſeſſe.*" Churches and church-yards no longer afford protection to delinquents; but there are ſtill ſome *privileged places*, which ſhould be ſo regulated as not to afford a temporary ſhelter to debtors, &c. merely to enable them to illude " *the due proceſs of the law,*" and then to eſcape without making any proper advances towards ſatisfying the law, " *——ſauns faire l'aſſeſſe,*" which, I ſuppoſe, ſhould rather be *l'aſſiſe*, i. e. without demanding a due enquiry into their caſe by *inqueſt*, or *aſſiſe*, of a *jury*. The privilege ſhould afford them, indeed, a ſhort, temporary, aſylum from any ſingle, mercileſs, creditor; yet not ſo as to favour their eſcape, but merely to give them time to call their other juſt creditors together, in order to make an equal diviſion, as far as their effects will go, after giving up *all* upon oath, and then to be abſolutely at liberty by the *common law*, without fear of farther arreſt, if there is no juſt ſuſpicion of concealment. The " *due proceſs of the law*" is ſacred, and ought not to be baffled (nor even *delayed* in any other manner than what I have deſcribed) by abuſes of *privileged places*; and therefore all *Court-Leets*, or *trithings*, are competent, as being " *Courts of the King,*" to vindicate the *law*, and to limit the aſylum of *privi-*

leged

" *offence which is preſentable, or of any* " *offender; it is lawfull for the Bayliffes,*" (or Stewards,) " *by twelve more diſcreet* " *men,*" (in the original — " *per* xii. " *plus vaillant,*" " more courageous," or

leged places within reaſonable bounds, ſo as to *relieve* oppreſſed debtors, without *violently injuring* the *juſt rights* of creditors. The old common-law cuſtom before-mentioned in behalf of debtors, viz. that they ſhould be abſolutely relieved from the fear of arreſt, by giving up all their effects, upon oath, amongſt their creditors, was called, in the North of England, " *ſwearing themſelves bare*;" and I remember ſome inſtances of it ſeveral years ago, but whether it is ſtill in uſe I do not know: it is, however, a *reaſonable* uſage, which, under the regulation of *Court-Leets*, (were they univerſally revived,) might prevent the *impriſonment*, and conſequent *ruin*, of many uſeful and induſtrious members of ſociety. The only circumſtance remaining to be cited from the articles of 18th Edward II. is N° 33. " *Of ſuch as take doves in winter by door-falls or* " *engines.*" *Door-falls* are not mentioned in the original, but " *laces,*" for *lacets*, nooſes, or *ſnares*. Some other very neceſſary ſubjects of enquiry are mentioned by Fleta, though omitted in all the other liſts of articles, viz. concerning *all neglects in keeping watch and ward*, and concerning the King's highways not duly widened. (N° 28.) " *Item de vigiliis non obſervatis, et viis rega-* " *libus non elargatis.*" And, laſtly, (all the *other* arti-

or " more worthy,") " *to enquire of the* " *truth thereof without delay; and although* " *that the laſt Jurours*" ſhould " *ſay that* " *the firſt are perjured, neverthelesſe be-*

 " *cauſe*

articles having been already cited,) " *Item de hiis qui* " *retinuerint probatores.*" — " *Alſo of thoſe who had re-* " *tained provers,*" or (as they were commonly called) " *approvers.*" An approver " *ſignifieth, in our common-* " *law,*" (ſays Dr. Cowell,) " *one, that, confeſſing* " *felony of himſelfe, appealeth or accuſeth another, one or* " *more, to be guilty of the ſame; and he is called ſo, be-* " *cauſe hee muſt* PROOVE *that which hee hath alleadged in* " *his appeale.* Staunf. pl. cor. fo. 142. *And that* " *proofe is by battell, or by the countrey, at his election that* " *appealed,*" &c. And, whilſt the barbarous and unreaſonable cuſtom of " *trials by battle*" continued, a hardened villain that was ſkilful at cudgeling, or could bear a hearty drubbing, had it in his power (if it be true that the *appellor* had the election of the kind of trial, and not the *appellee*) to compel any honeſt man, that happened to be weaker than himſelf, either to riſque the misfortune of an unequal combat, or to loſe his land and fly the country. An enquiry, therefore, after the *retainers* and encouragers of ſuch dangerous knaves, was highly neceſſary in ancient times; but the *approvers* of the preſent times, i. e. thoſe culprits who turn *King's evidence* to ſave their own necks, cannot now endanger the life of an honeſt man in trials " *by* " *the country,*" unleſs the jury be extremely ignorant or partial; becauſe ſuch men, who have already confeſſed

their

" *cauſe that no* DECENERY" (in the original, TESTIMONY) " *or Jurour* IS " NOT ATTESTABLE" (in the original, N'EST ATTEINTABLE, is not attainable) " *with*

their own crimes, cannot juſtly be deemed *credible witneſſes*; ſo that their information is of no other avail or weight than as it may lead to more ſubſtantial evidence. And, beſides the crimes already mentioned, every other act of injuſtice or vice whatſoever, and even mere *immoralities*, (as I before remarked,) are within the cognizance of the *Court-Leets*, or *Trithings*, which are competent in themſelves to *find a remedy* for every *inconvenience*, without ſearching for acts of parliament, becauſe the latter were *intended*, at leaſt, to aid and promote *juſtice*, and not to take away or leſſen the *juſt* power of the ancient courts in ſuppreſſing *vice* and *immorality*. The pecuniary penalties, however, ordained by ſtatutes againſt various crimes and miſdemeanors, may afford to the Juries of *Leets* ſome information reſpecting what may be deemed an adequate *amerciament*; but it cannot be levied by virtue of the ſtatute, unleſs there is alſo an expreſs clauſe giving power to *Leets* for that purpoſe, (like the Statute of 4 James I. c. 5. againſt *drunkenneſs*;) but, as this, I believe, is very ſeldom the caſe, it is better to proceed entirely by the authority of the *common law* in all caſes wherein it is not expreſsly altered or changed by ſtatute. With reſpect to *drunkenneſs*, (a vice which generally precedes *moſt other vices*, and cannot therefore afford the leaſt colour

" *with leſſe than* TWO JURYES, *and*
" *becauſe the latter* JURIE *is not taken,*
" *but* EX OFFICIO, *of the Bayliffe, and*
" *not in the nature of an attaint, the firſt*
" *Jurours*

colour of excuſe to *any*, but is rather to be deemed an aggravation of the guilt of *all* vices,) every circumſtance of it ought to be ſtrictly enquired after, and the defaulters ſhould be regularly *amerced*, without remiſſion, that they may want *money*, at leaſt, though they do not want inclination, for that *damnable* * vice. Profane *ſwearing* and *curſing*, and alſo every idle or heedleſs mention of God's holy name, ſhould be duly *mulcted* at the Court-Leet, without *reſpect of perſons*, either of rich or poor, except in a due proportion of the *amerciaments* to their *reſpective* abilities of paying, that the *penalties* may be *felt* and regarded by offenders of all ranks, ſo that the *juſtice* of the Court may be *equal* and *effectual*.

By a ſtatute of 31 Eliz. c. 7. ſome other articles of enquiry are ſubmitted to the cognizance of court-leets: viz. " *If any perſon hath built, or cauſed to be built, any* " *manner of cottage for habitation or dwelling, or convert-* " *ed any other building to be uſed as a cottage* for habita- " tion or dwelling, without aſſigning, or laying, to the " ſame cottage or building, four acres of ground at the " leaſt, &c. lying near to the ſaid cottage, to be con-
" tinually

* " Be not deceived: neither fornicators, nor idolaters, nor adul- " terers, nor effeminate, nor abuſers of themſelves with mankind, " nor thieves, nor covetous, NOR DRUNKARDS, nor revilers, " nor extortioners, ſhall inherit the kingdom of God." 1 Cor. vi. 9, 10. alſo Gal. v. 21.

" *Jurours are* NOT *to be taken* ATTAINT-
" ED, *but are only to be* AMERCED."
" *And, if any one profer himſelfe to*
" *ſweare fealty to the King, he is firſt to*
" *be*

" tinually occupied and manured therewith, ſo long
" as the ſame cottage ſhall be inhabited."

The forfeit or penalty is 10l. to the King; and the upholding, maintaining, and continuing, any ſuch cottage is 40s. for every month. The act does not extend to cottages erected " *in any city, town corporate, or ancient* " *borough or market-town, &c.*" nor to cottages " *for* " *the neceſſary and convenient habitation or dwelling of* " *workmen or labourers in any mineral works, coal-mines,* " *quarries or delfs of ſtone or ſlate, or in or about the ma-* " *king of brick, tile, lime, or coals, within this realm:* " *ſo as the ſame cottages or buildings be not above one mile* " *diſtant from the place of the ſaid mineral, &c.*" nor " *to* " *any cottage to be made within a mile of the ſea; or upon* " *the ſide of ſuch part of any navigable river where the* " *admiral ought to have juriſdiction, ſo long as no other* " *perſon ſhall therein inhabit but a ſayler, or man of ma-* " *nual occupation, to or for making, furniſhing, or vic-* " *tualling, of any ſhip or veſſel uſed to ſerve on the ſea;* nor " *to any cottage to be made in any foreſt, chace, warren,* " *or park, ſo long as no other perſon ſhall therein inhabit* " *but an underkeeper or warrener, &c.*" nor " *to any cot-* " *tage heretofore made, ſo long as no other perſon ſhall therein* " *inhabit but a common herd-man, or ſhepherd, for keeping* " *the cattle or ſheep of the town; or a poor, lame, ſick, aged,* " *or impotent, perſon;*" nor " *to any cottage to be made,*
" *which,*

" *be* PLEDGED *in ſome* FRANCKPLEDGE,
" *and put into the* DECENERY," (" *miſe*
" *en* DIZEIN," placed in a Decenary,
the French word DIZEIN, for a *Decenary*,
being

" *which, for any juſt reſpect, upon complaint to the juſtice*
" *of aſſize, at the aſſizes, or to the juſtices of peace at the*
" *quarter-ſeſſions, ſhall, by their order, entered in open*
" *aſſizes, or quarter-ſeſſions, be decreed to continue for ha-*
" *bitation for and during ſo long time only as by ſuch decree*
" *ſhall be tolerated and limited.*"

But cottages " *builded upon commons or waſte grounds*" were allowed only *three acres* to be encloſed to and with the ſame; and, if " *there be above the number of three acres*
" *encloſed therewith, the overplus ſhall or may be laid open*
" *by the owner or owners of the ſame waſtes,* &c." See 3d and 4th Edw. VI. c. 3.

And incloſed *gardens, orchards,* or *ponds,* made in any ſuch waſtes or grounds, are permitted, by the laſt-mentioned act, to remain to the owners, if they exceed not the quantity of two acres. (§. v. & vi.)

We muſt neceſſarily underſtand, that the permiſſion in theſe two clauſes could not have been intended to extend to parts of commons or waſtes that have been clandeſtinely joined by incloſures to any neighbouring freehold land; for the latter is notorious incroachment, or purpreſture, on public rights by *land-owners,* who, on account of the land they already poſſeſs, are the leaſt intitled to ſuch an indulgence.

The court-leet ſhould alſo enquire, " *If there be any*
" *inmate, or more families or houſeholds than one, dwelling*
" *or*

being manifeſtly the root of the word *dozen*, which now bears a very different ſenſe,) " *and*" (be) " *afterwards ſworne* " *to the King; and then he is forbidden to* " *offend*

" *or inhabiting in any one cottage.*" In which caſe, the owner or occupier of the cottage forfeits to the lord of the leet 10s. " *for every month that any ſuch inmate, or* " *other family than one, ſhall dwell or inhabit in any cottage* " *as aforeſaid,*" &c. See the before-cited act of 31 Eliz. c. 7. which gives full power to court-leets " *to enquire* " *and to take preſentment, by the oath of jurors, of all and* " *every offence in this behalf,* (i. e. *reſpecting cottages, &c.*) " *and, upon ſuch preſentment had or made, to levy by diſtreſs,* " *to the uſe of the lord of the leet, all ſuch ſums of money as* " *ſo ſhall be forfeited,*" &c.

We are farther informed by *Fleta*, in the chapter before cited, (viz. lib. ii. c. 52.) that, " *when the* CHIEF " PLEDGES *ſhall have anſwered diſtinctly*, ſays he, † *to* " *theſe various heads, (or articles,) belief is due not only to* " *their*

† " Cum autem *Capitales Plegii* ad hæc capitula diſtinctè reſponderint, non ſolum eſt eorum veredicto fides adhibenda, verumetiam ſacramento et veredicto duodecim liberorum hominum, qui ſuper indictamentis prædictis et etiam de concelamentis prædictis onerentur veritatem declarare; nec poterunt a ſacramento excuſari per exceptionem, quod non ſine brevi reg', eo quod illo die non habebit exceptio locum, quia conceſſum eſt omnibus libertatum viſus francii plegii habentibus quod ſui liberi tenentes, vel alii liberi ad viſus ſuos ſectatores in turnis et viſibus jurent, non obſtante ullo regio mandato, vel graviter pro contempu amercientur, eo quod DIES REGIS EST, ET IN FAVOREM PACIS FUIT INVENTUS."

" *offend and common*" (i. e. commune) " *with offenders, aud he is to be enjoyned* " *to be obedient to his* CHIEFE PLEDGE *." " *And to take this oath in heſe* VIEWS " *is none exempted who is paſt the age of* 21 " *yeeres,*" (a tranſpoſition of theſe Figures

T *viz.*

" *their verdict but alſo to the oath and verdict of twelve* " *freemen, who, upon the ſaid indictments and alſo upon the* " *ſaid concealments, are charged to declare the truth; nor* " *can they be excuſed from their oath by* EXCEPTION, " *which* (is) *not without the king's writ, becauſe that* " NO EXCEPTION *will have place on that day, for to all* " *that have the liberty of* VIEW OF FRANKPLEDGE, *it* " *is granted that their own* FREE TENANTS, and OTHER " FREEMEN SUITORS TO THEIR VIEWS" (or inqueſt) " *ſhall ſwear*" (act upon oath) *in* TURNS *and* VIEWS, " *notwithſtanaing any royal mandate*" (to the contrary) " *or they ſhall be heavily amerced for the contempt, becauſe* " *that it is* THE KING's DAY" (i. e. the day on which the *great leet after Michaelmas* is held for the *view of frankpledge* is to be deemed the *king's day*) " *and* IT WAS " INVENTED IN FAVOUR OF (the common) PEACE."

* CHIEF PLEDGE, i.e. The *captain of ten*, the elected chief of the *ten deciners*, by whom the newly-admitted ſtranger is to be *pledged*, if he is not a *houſeholder*, but only a *lodger*, a *journeyman*, or a *ſervant*; but with whom he is to be *aſſociated* and numbered as a *deciner*, if he has qualified himſelf for it by becoming a *houſeholder*.

viz. 12 *, is the number expreſſed in the original,) " *man or woman* †, *clerke nor* " *layman, except alliens, ſtrangers, meſſen-* " *gers, or merchants, and thoſe who are in* " *cuſtody.*"

" *At theſe Views of Turnes, and Views* " *of Frankpledges,* ESSOIGNES HOLD" (" TIEN LIEU ESSOIGNES," eſſoines take place, or are to be admitted, " *where* " *the abſence of thoſe who cannot be there* " *is excuſable, and ſuch* ESSOINES *are ad-* " *journable*

* I have already remarked, that 12 years ſeems too tender an age for perſons to be required to *take the oaths*, though it is certainly very proper that all perſons of that age ſhould appear at *the view* to be publicly admitted as members of the community, and to be arranged under the protection of ſome *decenary* of aſſociated houſekeepers, in order to be duly *pledged* to the public peace. *Bracton*, as I have before remarked, mentions the age of 14 years; perhaps 16 or 18, when youths are more capable of bearing arms, would be a more reaſonable age, or even the *tranſpoſed* number 21.

† By this it plainly appears that all young *girls*, above 12 years of age, as well as *youth*, are required to appear at the *view of frankpledge*, and of courſe are liable to be *fined* for non-attendance. *Married women* are excuſed by the law; but have ſurely a right to attend with their aughters, if they think it proper to do ſo.

" *journable to the next courts following*, " that the ESSOINERS *have*" (" *eyent*" may have) " *their* WARRANTS*."

Thus it is manifeſt that the law requires all perſons to attend *the view of Frankpledge*, and renders them liable not only to the cenſure of that court, but alſo to be *amerced* if they neglect to attend, and have not a reaſonable excuſe, or legal *eſſoin*, to juſtify their abſence; ſo that, if ſheriffs and other perſons, who have juriſdiction of *leets*, were but convinced of the general utility of *tithing aſſociations*, they have already ample powers to re-eſtabliſh them in their reſpective diſtricts. And if the whole body of the people, both men and women, were thus regularly and ſyſtematically arranged in their proper diviſions, all riots, mobbing, and illegal obſtruction, at *elections*, and on other occaſions of popular concourſe, might be

 eaſily

* *I.e.* proper Certificates of a legal excuſe, or admiſſible reaſon, for their abſence from the *View of Frankpledge*.

eaſily prevented, and the obſcure ſons of violence and anarchy might be moſt effectually reſtrained, and, by the facility of diſcovery, be rendered "*forth-coming*," and perſonally reſponſible for all miſdemeanors, and even for ſuch impertinencies and immoralities as ought to be curbed: becauſe every ſingle *unit* of our national *millions* of inhabitants, together with his or her communication and manner of living, might then be eaſily *traced*, as to a given point, throughout all the regular gradations of *ſhires*, *thouſands*, *hundreds*, *fifties*, *tithings*, and *families*, even to the very chamber of the ſculking delinquent. For, whether a country be more or leſs populous, it makes no difference in the efficacy and regularity of this ſyſtem, becauſe the propoſed numerical diviſions would ſtill bear the ſame proportions exactly, with reſpect to each other, in either caſe, viz. whether the people be few or many.

And

And the leſſer diviſions of *tithing* are ſo ſmall and manageable, that every *individual*, as well as every *family* therein, may be eaſily known and controuled by their elected *Chief-Pledges*, who, with their whole diviſions, are again included and controuled in ſtill larger diviſions, equally well proportioned, under *ſuperior chiefs*, or *juſticiaries*. And theſe *juſticiaries* inveſted with ample power of *law* and *right*, are ſo limited, with reſpect to *tort*, *wrong*, or *injury*, that they have no authority to act contrary to *common conſent*, nor to proceed againſt any man without "*due proceſs of the law*," though they have effectual means of information concerning the abode and general circumſtances even of the meaneſt individual, throughout all the *tithings*, by their neareſt neighbours and acquaintance. For, when the tithings are properly regulated with their ſuperior diviſions, each Tithing may truly be ſaid to be "*as it were a*

"*wheel*

" *wheel in the middle of a wheel,*" (Ezek. i. 16.) and more eſpecially ſo when the *rotation of watch and ward,* and of other public ſervice, is duly *circulated* throughout all the diviſions of a whole nation; for ſuch " *wheels*" are indeed " *full of eyes round* " *about,*" (Ezek. x. 12.) eyes to convey information and complete knowledge in all popular concerns whatſoever, (as I have elſewhere obſerved on the word *cherubim**,) ſo that the moſt obſcure offender cannot eſcape the juſtice of the community, whenever he is duly indicted and ſought.

If this ancient form of popular government was duly eſtabliſhed, it would alſo regulate, with the utmoſt preciſion, the rights of all *electors,* and would completely obviate the ſpecious *objections* againſt *Parliamentary Reformation* that have lately been publiſhed, in a little tract,

* See Tracts on " *National Defence by a Free Militia,*" p. 40 and 41.

tract, intituled "*Thoughts on a Parliamentary Reform**;" for it would moſt certainly afford the effectual means of maintaining perfect peace during the time of *elections*, and would render the polling of the electors (be they ever ſo numerous,) not only *practicable*, but perfectly eaſy and free from confuſion, even if the limitations of the *right of voting* were drawn out to the moſt liberal extent that has yet been propoſed; even according to the *plan*,

* This celebrated Tract, *little* as it is in bulk, hath ſtill *leſs* of truth and juſtice in its poſitions and concluſions; ſo that, after paying all due reſpect to *the ſingular wit and humour* of the writer, we muſt neceſſarily deem it as *ſuperficial* and *groundleſs* as it is *ſhort!* but it is nevertheleſs rendered important and conſiderable, by the great circulation and public notice with which it hath been honoured: for, though the author did not think proper to prefix *his name*, the bookſellers, it ſeems, have made no ſecret of it, and the work has been induſtriouſly retailed by piece-meal in the news-papers, and has, therein, been publicly attributed to a certain facetious old gentleman of rank and conſequence in the polite world, and alſo of conſiderable celebrity as a writer; by which circumſtances we may eaſily account for the extraordinary ready ſale and circulation of ſuch a work.

plan, which this author *ironically* declares, he "*prefers to all the reſt*," viz. "*that* "*of giving a right of voting univerſally*, "*together with annual elections.*" This is the plan, which, he ſays, "*appears* "*to be the moſt uniform, conſiſtent, and* "*effectual:*" but then he quaintly adds, "*it has, indeed, one capital defect, which* "*is, that it is abſolutely and utterly im-* "*practicable, &c.*"

Now, if this was as *true* as it is *witty*, the ſtate of the nation would indeed be deſperate! for, if the "*moſt effectual*" plan of reformation was really *impracticable*, any attempt whatever to correct the enormous *inequality*, or *in-equity*, of the national repreſentation, and its conſequent *ruinous venality* and manifold *deſtructive corruptions*, would indeed be hopeleſs! and we ſhould, of courſe, be obliged to embrace this author's forlorn and *diſloyal* doctrine, (in p. 17.) which may

may truly be ſaid to expreſs the ſcope and drift of all his arguments; becauſe they are, for the moſt part, *deiſtically** found-

U ed,

* In a well-intended work of the ſame celebrated author, wherein *Deiſtical* notions ought not to have appeared without their antidote, we may find ſeveral very heterodox and dangerous poſitions, ſtated as the remarks of "*ſome ſpeculative and refined obſervers*," viz. that to ſuch perſons "*it has appeared incredible*," (ſays he,) "*that a wiſe and benevolent Creator ſhould have conſtituted a world upon one plan, and a religion for it on another*;" &c. &c. (P. 133.) 2dly, That "*the love of power, riches, honour, and fame, are the great incitements to generous and magnanimous actions; yet by this inſtitution*" (meaning the chriſtian religion) "*are all theſe depreciated and diſcouraged.*" (P. 134.) 3dly, That "*government is eſſential to the nature of man, and* CANNOT *be managed without certain degrees of* VIOLENCE, CORRUPTION, *and* IMPOSITION, *yet are all theſe ſtrictly forbid.*" (ibid.) 4thly, That "*nations* CANNOT *ſubſiſt without wars, nor wars be carried on without rapine, deſolation, and murder; yet are theſe prohibited under the ſevereſt threats.*" (P. 134 and 135.) 5thly, That "*the non-reſiſtance of evil muſt ſubject individuals to continual oppreſſions, leave nations a defenceleſs prey to their enemies; yet is this recommended.*" &c. &c. &c. And, at laſt, he renders himſelf anſwerable for theſe pernicious and contradictory poſitions, by indiſcriminately adopting them all, and making them his own, ſaying, "*To all this I anſwer, that ſuch indeed*

ed, not only on the like falſe idea of the univerſal and irremediable exiſtence and pre-

" *is the Chriſtian Revelation, though ſome of its advocates* " *may, perhaps, be unwilling to own it, and ſuch*" (ſays he) " *it is conſtantly declared to be by him who gave it, as well* " *as by thoſe who publiſhed it under his immediate direction:*" But, happily for mankind and the honour of our holy religion, the texts, which he has cited to juſtify his aſſertion, contain nothing that can poſſibly afford the leaſt ſanction to any ſuch doctrines and contradictions. That *world*, which our Saviour ſpoke of as being in oppoſition to *him* and *his*, could not mean *the world conſtituted upon the plan of the Creator*, but only the wickedneſs of *worldly men*, ſuch as the apoſtle Paul has particularly deſcribed in his ſecond epiſtle to Timothy, (ch. iii. v. 2-9. " *Lovers of their own-ſelves, covetous, boaſters, proud,* " &c. &c. &c." " *Lovers of pleaſure, more than lovers of* " *God*; *having* A FORM OF GODLINESS, BUT DENY- " ING THE POWER THEREOF; *from ſuch*" (ſaid the apoſtle) " *turn away*;" manifeſtly giving the very ſame advice, which appears in one of the texts cited by this writer, " *Be not conformed to this world* *," i.e. to the manners and unprofitable purſuits of ſuch *worldly* men as I have deſcribed in the words of the apoſtle; for of ſuch is ſurely formed that " *world which is at enmity with* " *God*," mentioned in another of the texts cited, by him, from the apoſtle James. Nay, that † " *wiſdom of the* " *world which is at enmity with God*" cannot be illuſtrated by more flagrant examples than theſe very poſitions, which our author has unguardedly adopted from " *ſome ſpeculative and refined obſervers*," and more eſpecially

* Rom. xii. 2. † 1 Cor. ii. 6. Jam. iv. 4.

prevalence of *wrong* in this world, but alſo (which is ſtill worſe) on the ſame

 ima-

cially the third, that "*government cannot be managed* "*without violence, corruption, and impoſition,*" which I propoſe more particularly to examine, becauſe it is a *political* doctrine too generally adopted by *placemen* and *penſioners*, and which is manifeſtly the very principle or eſſential ſpirit which pervaded, and has notoriouſly influenced, every page of our author's "*Thoughts on a* "*Parliamentary Reform!*" His *firſt* poſition is materially connected with the *third*, and will, of courſe, fall under the ſame examination. With reſpect to his *ſecond* poſition, I ſhall briefly remark, that, though "*the love* "*of power, riches, honour, and fame, are*" indeed moſt commonly "*the great incitements to generous and magna-* "*nimous actions,*" yet, for the honour of human nature, theſe are not to be deemed the *only* incitements, becauſe the MOST "*generous*" and the MOST "*magnanimous* "*actions*" have much more noble *incitements* than he has conceived, viz. the *love of God*, and the *natural love* of *juſtice* and *right*; ſo that his poſition proves nothing againſt the merit of actions that are *truly* and *perfectly generous*. And, beſides theſe worthy *incitements*, the agency, or influence, of GOD'S HOLY SPIRIT is alſo to be deemed an *incitement to generous and magnanimous actions*; nay, it is certainly the higheſt *incitement*, or the *ſupreme principle of action in man*, by which *all* chriſtians *ought* to be influenced, and moſt certainly *may* be ſo, if they do not neglect the promiſed *means!* This, I truſt, is amply proved in my tract on *the Law of Nature*, &c.

The

imaginary NECESSITY *of yielding to that wrong*, for the maintainance of government;

The *fourth* and *fifth* poſitions are grounded on a ſtrange miſunderſtanding of the true doctrine concerning *non-reſiſtance*; for, though we are, indeed, required to forgive *perſonal injuries*, and to ſubmit to them with chriſtian meekneſs, when any one of *ourſelves* is individually the ſufferer, nevertheleſs we are, moſt certainly, bound in chriſtian duty to *reſiſt evil* and *injury* whenever the *perſons* or *property* of *other* men are in danger; and to defend *each other* from all unjuſt *violence* and *rapine*, whenever it is in our power to do ſo; and that even at the riſk of our lives; which I have fully ſtated in my tracts on *Crown Law* and *Paſſive Obedience*. And, if individuals may, legally, and conſiſtently with their duty as chriſtians, *reſiſt evil* in defence of *each other*, ſurely a whole chriſtian community, or *nation*, may, moſt conſcientiouſly, be allowed, in their united legiſlative or executive capacity, a power of *defending the innocent*, and of *reſiſting evil* and *oppreſſion*: for this is the true foundation of all *juſt wars*, which, certainly, in the neceſſary defence of a *nation*, may be carried on without the guilt of *rapine* and *murder*; ſince, even between *individuals*, the *inevitable killing* of an adverſary, in the neceſſary defence of a man's own perſon, is clearly *juſtifiable* in *law*, as well as in *reaſon*, which is the *eternal* law of God. And *national juſtice*, in many caſes, is unqueſtionably required to *reſiſt evil*, even unto *blood!* The blood of the murderer (i. e. of the *voluntary killer of a* MAN) is abſolutely required to be ſhed by MAN, (" *by man ſhall his blood be ſhed*," Gen. ix. 6.) and a moral

ment; i. e. the deluſive and baneful doctrine of a NECESSITY *to* "*do evil*,

"*that*

moral reaſon is elſewhere aſſigned for this retaliation by *man*, viz. "*for blood it defileth the land: and the land* "*cannot be cleanſed of the blood that is ſhed therein but by the* "*blood of him that ſhed it.*" (Num. xxxv. 33.) And this, ſurely, is a *reſiſtance to evil*, a retaliation of *violence in kind*, even to the utmoſt extremity of *violence*,—to death! This, however, muſt be underſtood only of *judicial acts* of retaliation, duly limited in all their circumſtances by the eſtabliſhed laws of the *community*, or nation, which inhabits *the land where the blood is ſhed*; but, under ſuch due reſtriction, the retaliation of *blood* for *blood* is ſo far from being forbidden, that the land, it is manifeſt, cannot be *cleanſed* without it. The indiſcriminate doctrine, therefore, of *non-reſiſtance*, as ſtated in theſe two poſitions, has no foundation in ſcripture, nor indeed any where elſe, except in the *miſunderſtanding* and inaccuracy of theſe *ſpeculative* and *refined obſervers!*

I may now return to the conſideration of his third poſition, that "*government is eſſential to the nature of* "*man, and* CANNOT *be managed without certain degrees of* "VIOLENCE, CORRUPTION, *and* IMPOSITION; *yet all* "*theſe are ſtrictly forbid.*" The firſt part of this ſentence, as well as the laſt, muſt certainly be admitted as unqueſtionable *truths*; but if the middle part of the propoſition were equally *true*; viz. that government "CANNOT *be managed without violence, impoſition,*" &c. it would follow, of courſe, that the *neceſſity of the caſe* muſt regularly ſuperſede all that is ſo "*ſtrictly* "*forbid*" concerning it! and then, indeed, theſe "*ſpe-*

"*culative*

"*that good may come*," the common received notion of *Deiſtical* time-ſervers, who

"*culative* and *refined obſervers*" would have a better foundation for their impious inſinuation, that the *Creator hath* "*conſtituted a world upon one plan, and a reli-*
"*gion for it on another!*" Nay, I have frequently heard theſe very principles avowed in converſation, by ſome other *ſuch* "*friends to good government*" as our author, in terms to the following effect. "*That public buſineſs*
"*cannot be carried on without* BRIBERY *and* CORRUP-
"TION: *that the meaſures of adminiſtration are indiſ-*
"*penſably* NECESSARY *to maintain due ſubordination and*
"GOOD GOVERNMENT, *and muſt not, therefore, be im-*
"*peded by unſeaſonable negatives of parliament; ſo that*
"POLITICAL NECESSITY *will ſufficiently juſtify*
"*the ſtateſman in exerting all poſſible influence to obtain a*
"*majority at any rate.*" Thus the plea of NECESSITY is introduced to *palliate* and excuſe, nay, even to *juſtify* and *eſtabliſh*, the moſt flagrant enormities! as if *iniquity* was become an eſſential principle of government, ſo authorized and *eſtabliſhed* by the ſanction of *general uſage*, that every attempt to correct it muſt be deemed an *innovation to the conſtitution!*

In no other point of view can be underſtood the fallacious and groundleſs charge of INNOVATION which has regularly been oppoſed to *parliamentary reform*, by men of *a certain deſcription*, whenever it hath been propoſed. With theſe *latitudinarians in principle*, all diſtinctions between *right* and *wrong* muſt be meaſured by *political expediency*, becauſe *government*, according to them, "*cannot be managed without certain degrees of violence,*
"*corruption*,

who will not admit the true comfortable doctrine of God's immediate direction and providence

" *corruption, and impoſition!*" Thus the celebrated writer hath very honeſtly ſtated the *ruling* maxim of that *venal majority* with whom he always *voted* and *aſſociated*. And, as theſe " *ſpeculative and refined obſervers*" have carried this wretched ſyſtem of *political neceſſity and expediency* to the utmoſt extent that it was capable of, I have need only to cite their own *woeful experience*, as a moſt ſtriking and undeniable example of its abſurdity!

The INIQUITY of theſe acknowledged means of " *managing government*," viz. " *violence, corruption, and* " *impoſition*," added to the MISCARRIAGES which ſuch worthy *miniſterial accompliſhments* have of late years notoriouſly occaſioned, would form too heavy a burden for one broad back! I ſpeak, therefore, of the late *governing* majority in the aggregate, and ſhall not be tempted to particularize, unleſs any of them ſhould ſtill perſiſt in ſoliciting and inviting, as it were, the national juſtice againſt themſelves, for their former miſconduct when in power, by any farther unreaſonable and *provoking* oppoſition to the neceſſary *reformation*.

Under the baneful auſpices of theſe juſtifying Majorities and their *Managers*, the Patrons and Friends of this writer, (with the ſanction alſo of his *own ſteady vote* in all their meaſures,) the moſt diſgraceful and pernicious exceſs, of " *violence, corruption*, and *impoſition*," has been tried and puſhed to the utmoſt exertions of the national ſtrength and reſources; and at an expence of blood and treaſure, far beyond all example of former times!

And

providence over all his works, and conſequently cannot form any idea of the NECESSITY

And yet the deteſtable *experiment* has notoriouſly failed in almoſt every circumſtance propoſed to be effected by it, and, inſtead of *raiſing a revenue*, to gratify and eaſe "*the country gentlemen*," has *ſunk* the national reſources in a hopeleſs *gulph of debt*, the very intereſt of which is an *annual* expence of more than the value of an empire! i. e. *a revenue, by the rule of inverſe, againſt* the ſtate, like the "*negative quantity*" of the algebraiſts, "*leſs than nothing*," a "*minus*" of eight millions per annum, at leaſt, beſides a moſt diſgraceful diſmemberment of the Britiſh empire! So much for the EXPERIENCE of the "*ſpeculative and refined obſervers.*"

There are many maxims, indeed, which ſeem to favour the plea of *neceſſity*, as (1.) "NECESSITY *has no law.*" (2.) "*Neceſſity makes lawful what, otherwiſe, is not lawful.*" (3.) "*The ſafety of the people*" (which even bad miniſters will pretend to regard) "*is the ſupreme law.*" (4.) "*Neceſſity binds the law.*" (5.) "*Neceſſity ſcorns the bands of law.*" (6.) "*Nothing is more* JUST *than that which is* NECESSARY," &c. &c.

But the man, who has not ſufficient diſcrimination to aſſign the due legal limits to theſe doctrines of *neceſſity*, is certainly unworthy to be truſted either in *law* or *politics*. For the *common law of England* requires the accompliſhed

(1.) "Neceſſitas non habet legem." (2.) "Neceſſitas facit licitum "quod alias non eſt licitum." (3.) "Salus populi ſuprema eſt lex." (4.) "Neceſſitas vincit legem." (5.) "Neceſſitas legum vincula irridet." (6.) "Nihil magis juſtum eſt, quam quod neceſſarium eſt," &c. &c.

CESSITY *of doing right*, and of being ſtrictly *juſt* on all occaſions, exceeds every

X other

accompliſhed *lawyer*, or *politician*, to be alſo a *chriſtian*, and cannot, therefore, excuſe the too faſhionable doctrine of the vulgar great, that a *ſtate neceſſity* is not limited by the common rules of *honeſty* and *morality*.

The maxims in queſtion, therefore, manifeſtly "relate "only to ſuch *laws* as are made to remedy inconve- "niencies *not in themſelves evil*, mere *mala prohibita*; "but cannot authorize any thing that is *malum in ſe*; "for that would be REBELLION AGAINST GOD, which "no caſe can juſtify *." For, of thoſe, who ſay "*Let* "*us do evil, that good may come*," the ſcripture has added, "*whoſe damnation is juſt*, (Rom. iii. 8.) and therefore "*melius eſt omnia mala pati quam malo conſentire* †," is an eſtabliſhed maxim of *right*, (3 Inſt. 23.) inſomuch that a king cannot *legally* diſpenſe with "*malum in ſe*," nor can all the *omnipotence of parliament* eſtabliſh it by ſtatute; becauſe, by the renovating principles of the common law, any ſuch ſtatute muſt be deemed *null* and *void in itſelf*, a mere *corruptela*, and *no ſtatute*, as I have elſewhere amply proved. And, as *iniquity*, or "*malum* "*in ſe*, is never *lawful*, neither is it ever NECESSARY; but, on the contrary, *impolitic*, and *hurtful*, even to a proverb ‡, as it commonly "*renders bad worſe!*" this

is

* See the proteſt of a private perſon againſt every ſuſpenſion of law, &c. p. 25 to 44.

† "It is better to endure ALL adverſities than to aſſent to ONE "evil meaſure."

‡ "He that ſoweth *iniquity* ſhall reap *vanity*; and the rod of his anger ſhall fall." Prov. xxii. 8.

other *neceſſity*, and removes all difficulty from the ſoundeſt and beſt *policy* in the government

is the *ordinary* effect of wicked policy, (ſo amply demonſtrated in the *experience* of the celebrated author's *political friends*,) ſo that even the powerful plea of *neceſſity* cannot juſtify ſuch *expedients*, nor excuſe the *diſhoneſty* and *treacherous conſpiracy* of thoſe who practiſe them! becauſe the *immorality* of ſuch evil policy, whether attended with ſucceſs or not, is always *certain* and *humiliating*; for, the *worldly* politician, (who ſtrives to parry off *evil* by *evil*,) from being, perhaps, ſimply *unfortunate*, renders himſelf *baſe*, *miſcreant*, and *diſhonourable**. Theſe (with due deference to "*the ſpeculative and refined obſervers*") are the additions, or epithets, due to *immorality* whenever it is active: but this is not all; even if the *wicked policy* ſeems at any time to be ſucceſsful, if it ever aſſiſts in warding off a *temporary misfortune*, yet it only tranſfers the merited ſuffering from *this world* to the *next*, by rendering the mere *worldly* politician obnoxious to *eternal judgement!* which is certainly due to every one that ſhews himſelf more afraid of *man* than of his *Creator!*—more a paſſive ſubject under "*the prince of this world*," (which is the *devil* himſelf, the "*mammon of unrighteouſneſs*,") than a *free citizen of the*

* In a prophetical deſcription of *an abandoned man*, (ſee Pſalm xxxvi.) it is declared, as a part of ſuch a character, that "*he hath not abominated* EVIL," רע לא ימאס. What then ſhall we ſay of thoſe wretched *time-ſervers*, who not only *vote* for every *evil* meaſure, and oppoſe every *good* one, (ſee *Thoughts on a Parliamentary Reform*,) but even promote and inculcate *evil* by *precept* and regular *principles!* (ſee the deteſtable falſe doctrines of *Political Neceſſity* already cited). The *not hating evil* ſoon draws after it the whole character of *reprobacy!*

government of ſtates and kingdoms;—"*fiat juſtitia, ruat cœlum.*" This gen-

 tleman's

the kingdom of God! For the indiſpenſable duty of the latter is "*righteouſneſs on all occaſions* *;" this only is *honourable*, this only is *politic:* becauſe "*whoſoever doth not* RIGHTEOUSNESS *is not of God.*" (1 John 3. 10.) And the ſame juſt principle is equally indiſpenſable in the duty of every *free citizen of the kingdom of England*, by all the infallible foundations of our common law; to which the propoſitions of "*the ſpeculative and refined obſervers*" are utterly repugnant! How then ſhall we reconcile them? Muſt the very *foundations* of our law and national policy be torn up, to make room for a tottering fabric of INIQUITY, frightfully reared and ſuſpended upon the rotten prop of an imaginary NECESSITY! No, let us rather examine whether the propoſition be true on which this ſuppoſed *neceſſity* is built: viz. that "go-"vernment" *cannot be managed without certain degrees* "*of violence, corruption, and impoſition!*" or whether, on the contrary, this deteſtable union of three diabolical principles, "*violence, corruption,* and *impoſition,*" is not itſelf the moſt obvious efficient cauſe of all the *neceſſities*

* בכל עת, literally, "*in every time,*" or "*at all times;*" for, there can be *no time* when *righteouſneſs* and *true judgement* are not to be maintained, ſo that there never can be a *neceſſity* to diſpenſe with them or *ſuſpend* them: "*Bleſſed are the keepers* (or maintainers) *of judgement,*" (משפט, i. e. true *legal* judgement,) without reſpect of perſons, of which the conſtitutional term in England is "*the due proceſs of the law,*" and "*bleſſed alſo is he that doth* RIGHTEOUSNESS AT ALL TIMES," (Pſalm cvi. 3.) This is an unqueſtionable AXIOM of the *eternal law* of God, and conſequently muſt be received as one of the infallible *maxims*, or *foundations*, of the *common law of England.*

tleman's abilities as a writer, his ready wit, and ſmooth agreeable ſtile, inſure a ready

ceſſities and *misfortunes* of every government; and which, if not ſpeedily reformed in our own, muſt inevitably produce a total ſubverſion of the ſtate and kingdom!

Search the hiſtories of all preceding nations that are either entirely loſt and overwhelmed with calamity and miſery, or elſe ſtill unhappily continue upon earth, a contraſted memorial of their once flouriſhing anceſtry, in a wretched exiſtence of *political ſlavery*, ſubjected to the deſpotic will, caprice, and miſgovernment, of arbitrary tyrants, and ſee if a ſingle inſtance can be found among them of any nation being thus deplorably reduced, till theſe baneful ſeeds of deſtruction, "*violence*, *corruption*, and "*impoſition*," (planted and watered by the "*refined obſervations*" of ſuch "*ſpeculative*" writers, as the author of "*Thoughts on a Parliamentary Reform!*" &c.) had taken deep root, had ſprouted, grown up, and flouriſhed, (under their foſtering hands,) till they were ripe for ſuch a harveſt! and yet theſe *refined obſervers* would have us believe, that the Creator hath "*conſtituted a* "*world upon one plan, and a religion for it on another*," (p. 133.) as if there was no DIVINE PROVIDENCE *in this world* to favour and encourage *juſt* men and *juſt* meaſures! or as if "*God's ways were not equal*," which, it ſeems, was an erroneous conception alſo of the backſliding people of Iſrael. "*Yet, ſaith the houſe of Iſrael,* "*The way of the Lord is not equal.* O HOUSE OF ISRAEL, "ARE NOT MY WAYS EQUAL? *are not your ways un-* "*equal? Therefore will I judge you, O houſe of Iſrael,* "*every one* ACCORDING TO HIS WAYS, *ſaith the Lord* "*God.*

ready reception of his ſarcaſms even againſt the moſt intereſting and ſerious *truths*;

"*God. Repent, and turn yourſelves from all your tranſgreſ-*
"*ſions*; SO INIQUITY SHALL NOT BE YOUR RUIN," &c. (Ezek. xviii. 29, 30.) By the *ruin* here ſpoken of, as occaſioned by *iniquity*, is to be underſtood a *temporal* ruin, to be brought upon their nation, on account of the "*vio-*
"*lence, corruption*, and *impoſition*, and other *iniquities*, with which their political "*government*" was unhappily "*managed.*" This ſenſe is rendered obvious by the preceding chapter, as well as by ſeveral which follow it; and particularly, in the 22d chapter, theſe three baneful *iniquities* are plainly pointed out, as principally concurring to effect the then approaching deſtruction of Jeruſalem! And firſt, with reſpect to "VIOLENCE." "*Behold*, (ſaid the prophet,) *the princes of Iſrael, every*
"*one, were in thee to their power to ſhed blood.*" And again, "*—in the midſt of thee have they* DEALT BY OPPRESSION
"*with the ſtranger: in thee have they vexed the fatherleſs*
"*and widow.*" And, with reſpect to their IMPOSITION and DECEIT, "*In thee* (ſaid the prophet)
"*are men which* CARRY TALES *to ſhed blood*;" and, with reſpect to their CORRUPTION and BRIBERY, "*In*
"*thee* (ſaid the prophet) *have they* TAKEN GIFTS *to*
"*ſhed blood!*" And theſe, with other crimes, are expreſsly declared to be the true cauſes of their political failure and national diſgrace; "*behold, therefore,*" (ſaid the prophet, in the name and power of him who ſent him,) "*I have ſmitten mine hand at thy diſhoneſt gain*
"*which thou haſt made, and at thy blood which hath*
"*been in the midſt of thee. Can thine heart endure,*" (or *be firm,*) "*or can thy hands be ſtrong, in the days that*
"*I ſhall*

truths; I mean, with careleſs, ſuperficial, readers, who delight more in wit, or in

" *I ſhall deal with thee?* I, THE LORD, (JEHO-" VAH,) " *have ſpoken* (it) *and will do*" (it.) And then follows the denunciation of vengeance, the uſual effect of ſuch " *management*" in politics! " *And I will ſcatter* " *thee among the heathen*, (or nations,) *and diſperſe thee in* " *the countries, and will conſume thy filthineſs out of thee.*" (Ezek. xxii. 6–15.) Theſe are clearly *temporal* judgements;—*the expulſion* of a *whole nation from their native country*, and their diſperſion as vagabonds amongſt their enemies, for their *wicked policy* in having "*managed*" their *government* with " *violence, impoſition*, and *corruption!*"

In the 33d chapter, alſo, the prophet again repeatedly reproves their impious ſuppoſition of an *inequality* in the *ways* of the *Creator*, which appears to have been eſſentially the ſame with the *deiſtical* propoſition of our " *refined obſervers*, about " *a world upon one plan, and* " *a religion for it on another.*" See verſes 17 to 29. " *Yet* " *the children of thy people ſay, The way of the Lord is not* " *equal: but as for them*, (ſaid the prophet ſpeaking of the " *ſpeculative refined obſervers*" of that day,) " *their way* " *is not equal. When the* RIGHTEOUS *turneth from his* " RIGHTEOUSNESS, *and committeth* INIQUITY," (whether in " *violence, impoſition*, or *corruption*," or as a literary advocate for all three!) " *he ſhall even die thereby.* " *But, if the wicked turn from his wickedneſs, and do that* " *which* IS LAWFUL and RIGHT, *he ſhall* LIVE THEREBY. *Yet, ye ſay, the way of the Lord is not equal. O* " *ye houſe of Iſrael, I will judge you every one after his ways.*" And a little farther, in the ſame chapter, the prophet is

in elegant expreſſion, than in real information. But, with men of common *ſenſe*, and

is charged with a ſolemn appeal to them, concerning the *improbability* of their being permitted to continue in *poſſeſſion of their country*, if they continued their deteſtable practices of *violence*, &c. in direct oppoſition to the *plan*, *religion*, and *laws*, of the Creator! "*Wherefore* "*ſay ye unto them, thus ſaith the* LORD GOD: *Ye eat with* "*the blood*, (a practice expreſsly forbid under the *patriarchal* and *Chriſtian* as well as the *Moſaic* diſpenſations,) "*and lift up your eyes towards your idols** *and ſhed blood:* "*and* SHALL YE POSSESS THE LAND? *Ye ſtand upon* "*your ſword*," (i. e. they truſted in their *ſtanding armies*, the power of *the beaſt*, and the ſource of all their criminal VIOLENCE,) "*ye work abomination*," (which includes every ſpecies of CORRUPTION and immorality,) "*and ye defile every one his neighbour's wife*†; and "SHALL YE POSSESS THE LAND? and then follows God's vindication of his PROVIDENCE, in an awful denunciation of a *ſure temporal vengeance* for ſuch enormities! "*Say thou thus unto them, Thus ſaith the* LORD GOD, "*(as) I live, ſurely they that are in the waſtes ſhall fall* "*by the ſword, and him that is in the open field will I* "*give to the beaſts to be devoured, and they that be in* "*the forts and in the caves ſhall die of the peſtilence. For*

"I WILL

* This is a charge of criminality which cannot be evaded by thoſe who pray before *images*, on the deluſive pretence of aſſiſting their devotion: for, though their prayers may be addreſſed to the *prototype*, yet they are certainly guilty of *lifting up their eyes towards their idols!*

† Thus *private* vices alſo haſten *public* calamities and *national* diſinheritance, and ſhould, therefore, be ſtrictly preſented and ſuppreſſed, by cenſures and amerciaments, in the courts of the congregation, the only effectual means of reſtraining *immorality!*

and common *honeſty*, it may be deemed a ſufficient anſwer to this gentleman's ſophiſtry,

" I WILL LAY THE LAND MOST DESOLATE, *and the* " *pomp of her ſtrength ſhall ceaſe; and the mountains of* " *Iſrael ſhall be deſolate, that none ſhall paſs through. Then* " *ſhall they know that I am the Lord, when I have laid* " *the* LAND *moſt deſolate* BECAUSE *of all their abominations* " *which they have committed.*" It is manifeſt, therefore, that the Creator hath NOT " *conſtituted a world* " *upon one plan and a religion for it on another,*" but, as " *his ways are equal,*" doth indiſpenſably require all men who profeſs *his religion*, as well *rulers* as *ſubjects*, to conduct themſelves in all things according to the *plan of that religion*, which is *righteouſneſs*. For " *the* " *Prince of peace,*" our leader and inſtructor, is alſo " *the* " *King of righteouſneſs;*" and, accordingly, the *only plan of government*, which chriſtians can hope to maintain *in this world* with proſperity and ſucceſs, muſt be that of " *righteouſneſs*; for " RIGHTEOUSNESS *exalteth a nation,*" " *but* SIN *is a reproach to any people.*" (Prov. xiv. 34.) *The throne* is eſtabliſhed by *righteouſneſs*, (Prov. xvi. 12.) See alſo the noble maxim of *eternal law*, in Pſalm xxxvii. 37. שמר תם וראה ישר כי אחרית לאיש שלום which may thus be rendered, " *preſerve* INTEGRITY, *and regard* " RIGHT, *for the after-effect to a man is peace.*" This is the uniform doctrine of many other texts, which manifeſtly relate to the *management of temporal governments in this world**, and therefore " *the world,*" or that part of

* The advice of the apoſtle Paul to the Philippians, (ch. i. v. 27.) was manifeſtly intended to regulate their whole behaviour as a *chriſtian*

ſophiſtry, to remark, that, in *proving too much*, he has far overſhot his mark,

 and

of it, which is *conſtituted* upon *a different plan*, is NOT *conſtituted by the Creator*, neither can it have any part in him *; but belongeth to that being alone, which "*deceiveth the nations*," to their *temporal* as well as their *eternal* deſtruction: "*That old ſerpent, called the devil "and ſatan which* DECEIVETH THE WHOLE WORLD!" (Rev.

tian community, and not merely their duty as *individuals*. "*Only let "your* CONVERSATION *be as it becometh the goſpel of Chriſt.*" The imperative verb, πολιτευεσθε, in our letters, *politeueſthe*, (rendered, "*let "your converſation be,*") included the *political* duty of the Philippians, in all their *public* tranſactions and arrangements for the government of their *community*, as well as the duty of *individuals*: and the maintaining ſuch *becoming converſation*, in all our dealings, public or private, as may be ſuitable to our religious profeſſion, is not only a rule of *chriſtianity*, but alſo of the *old law*. *Right*, either in the practice of the courts of judgement, or in politics, was never to be ſet aſide. Nay, not only *right*, but *right right*, i. e. *perfect right*, or, as it is rendered in our common verſion, "*that which is altogether* JUST *ſhalt thou follow.*" And the *reaſon* for that excellent *rule* is not leſs binding upon *Engliſhmen* at this day than it ought to have been upon the Iſraelites, to whom it was originally declared, viz. "*that thou mayeſt live and inherit the land.*" A reaſon, ſurely, which ought to awe all temporal governments into a ſtrict obſervance of "*right right*," of invariable *righteouſneſs* and *honeſty* in all their meaſures. See Deut. xvi. 20. "*That "which is altogether juſt*" (צדק צדק, or RIGHT RIGHT) "*ſhalt "thou follow, that thou mayeſt live and* INHERIT THE LAND *which "the Lord thy God giveth thee.*" Therefore, even in *worldly policy* as well as in *future judgement*, the old Engliſh proverb is irrefragable, "*Honeſty is always the beſt policy.*"

* For, "what fellowſhip is there between RIGHTEOUSNESS *and* "ILLEGALITY? (ανομια;) and *what communion to* LIGHT *with* "DARKNESS? *and what concord to Chriſt with Belial?*" 2 Cor. vi. 14.

and *conſequently proves nothing* that he has aimed at! becauſe his *ingenious* arguments, againſt

(Rev. xii. 9.) i. e. deceiveth all that numerous and unhappy part of mankind that do not reſiſt him according *to the Creator's plan of religion*, but blindly adopt the contrary plan of "*violence, corruption*, and *impoſition*." Theſe are the ſervants and miniſters of Satan! and not of God! and every "*government*," *managed* on ſuch principles, is manifeſtly a *branch* of Satan's temporal dominion, fitted for deſtruction; a hateful part of *that world*, which is oppoſed to the kingdom of Chriſt, in the ſeveral texts that have been ſo groſsly miſunderſtood by the celebrated writer abovementioned!

"*Let no man deceive you*," (ſaid the beloved apoſtle of Chriſt,) "*he that doeth* RIGHTEOUSNESS *is* RIGHTEOUS *even as he is* RIGHTEOUS. *He that committeth ſin is of the devil; for the devil ſinneth from the beginning.*" And again, "*in this* THE CHILDREN OF GOD *are manifeſt, and* THE CHILDREN OF THE DEVIL: *whoſoever* DOETH NOT RIGHTEOUSNESS *is not of* GOD, *neither he that loveth not his brother.*" (1 John iii. 7, and 10.) So that even the *omiſſion* of righteouſneſs is alſo fatal and impolitic, though not, perhaps, in ſo great a degree as the actual exerciſe of our celebrated author's three practical principles of *iniquity*.

In the hiſtory of David, we find that his *omiſſions* to execute *juſtice* and *right*, on ſome occaſions, were attended by puniſhments almoſt as exemplary as thoſe which marked his actual crimes. His neglect to puniſh his ſon *Amnon's* deteſtible violence and perfidy, towards his ſiſter *Tamer*, produced the treacherous murder

againſt all honeſt endeavours to reform national abuſes, and againſt every plan

der of *Amnon* by his brother *Abſalom*; and again, his farther neglect to puniſh *Abſalom* for that notorious *murder* (for no *human authority* can pardon murder) left him a *bloody* enemy to ſeek his own life, and actually to dethrone him for a time!

The holy ſcriptures abound with ſuch ſtriking inſtances of *bad*, as well as of *good*, actions; but *all* of them are to be deemed as *enſamples, written for our admonition*, (1 Cor. x. 11.) and therefore, we muſt not preſume to ſay, with the celebrated author, that ſome of the occurrences, related in ſcripture, are "*of no im-*" *portance at all*," (p. 128) and, the more eſpecially, becauſe even the *occurrences* which he himſelf has picked out * and cited, as ſamples of this unwarrantable doctrine, (and, doubtleſs, a gentleman, ſo celebrated in the polite world for wit and genius, muſt be ſuppoſed to have choſen the moſt *obvious ſamples* that could be found, if there were any,) are ſo far from being of "*no im-*" *portance at all*," that they are, on the contrary, *highly important*, and truly "*profitable for doctrine, for re-*" *proof, for correction*," &c. as, indeed, every other occurrence

* "I have no doubt," (ſays our celebrated author,) "but that St. "Paul was ſhipwrecked, and that he left his cloak and his parch-"ments at Troas; but the belief of theſe facts makes no part of "chriſtianity, nor is the truth of them any proof of its authority. It "proves, only, that this apoſtle could not, in common life, be under "the perpetual influence of infallible inſpiration; for, had he been "ſo, he would not have put to ſea before a ſtorm, nor have forgot "his cloak."

that has yet been propoſed for leſſening the corruptions of *parliament*, hold equally

currence related in ſcripture moſt certainly is both *important* and *neceſſary*, in ſome reſpect or other, whether we have ſagacity to diſcover it or not; becauſe the ſame authority aſſures us, that "ALL SCRIPTURE "(is) given by *inſpiration of God, and* IS PROFITABLE "*for* DOCTRINE, *for* REPROOF, *for* CORRECTION, *for* "INSTRUCTION *in righteouſneſs*," &c. 2 Tim. iii. 16.

Happily the celebrated writer, it ſeems, has "*no doubt*" of "*theſe facts*;" for, otherwiſe, "*the belief*" of them, he muſt allow, "*is neceſſary*," if it is but for *one plain reaſon*, viz. that they *are related in the holy ſcriptures*: but whenever the occurrences, mentioned in ſcripture, *are related in any other way*, in any way, I mean, that is *contrary to*, or *unſupported* by, the ſcripture-account of them, (like the celebrated author's *own way of relating* the occurrences in queſtion,) then, indeed, as he ſays, "*the belief of theſe facts*," *when* SO RELATED, "*makes no part of chriſtianity!*" When this gentleman, for inſtance, remarks concerning "*the truth of them*," that "*it proves, only, that this apoſtle could not, in com-*"*mon life, be under the perpetual influence of infallible in-*"*ſpiration*," (a point which requires no proof or diſpute at all,) he immediately ſubjoins, by way of illuſtration, a ſtate of circumſtances which is utterly diſcordant with the ſcripture-account of "*theſe facts*," ſaying, "*for, had he been ſo*," (i.e. under the influence of inſpiration,) "*he would not have put to ſea before a ſtorm,* "*nor forgot his cloak.*" But the celebrated author himſelf had "*forgot*," (it ſeems,) that the apoſtle *was a*

priſoner

qually good againſt *having any parliament at all!* and, when we find that this apparent

priſoner at that time, and could not avoid being "*put to ſea,*" ſo that this circumſtance *proves* nothing at all to the purpoſe of his argument; and he has "*for-*"*got,*" likewiſe, another circumſtance which is ſtill more unlucky for his aſſertion, viz. that the holy ſcripture has expreſsly informed us, that the apoſtle *actually foretold the danger of the voyage,* and has thereby given us ample proof of his being under "*the influence* "*of infallible inſpiration,*" at the very time, and in the very fact, which the celebrated writer has ingeniouſly cited as a proof to the contrary! (See Acts xxvii. 10.) The occurrence is, therefore, ſo far from being of "*no importance at all,*" that it is, perhaps, the *moſt important* of any in the whole hiſtory of that apoſtle! if we except his converſion; becauſe the actual attention of *divine providence* towards juſt and righteous men is exemplified (for the comfort of all perſons that are truly religious) in this eminent inſtance of God's regard to the perſon of Paul, in giving him ſuch *foreknowledge for his preſervation.* And the other circumſtances of the ſhipwreck are alſo *highly important* in many other reſpects; for, though the ſhip was really loſt, *agreeably to the apoſtle's prediction,* yet God afterwards *gave to Paul the lives of all that ſailed with him,* whereby he was authorized to aſſure them of ſafety, even when they were at the utmoſt extremity of danger, ſaying, "*there ſhall not a hair* "*fall from the head of any of you,*" though there were 276 ſouls on-board! ſo that the celebrated writer has, indeed, picked out a *moſt important occurrence* to ſerve

him

rent tendency of his arguments is not only a neceſſary concluſion to be drawn from

him as a ſample of thoſe which he ſuppoſes "*of no importance at all!*" and, as to the other *ſuppoſed* occurrence, (viz. that the apoſtle had "*forgot his cloak,*") it has not the leaſt foundation in holy ſcripture, or elſewhere, that I know of, except in the lively imagination of this agreeable *writer*, in order to give a quaint and facetious turn to the end of one of his ſentences, which is an object of more importance, it ſeems, with ſome faſhionable authors, than *truth* itſelf! That the apoſtle LEFT *his cloak in Troas*, (ὃν ἀπέλιπον ἐν Τρωάδι παρὰ Κάρπῳ, *which*, "*I* LEFT," ſays he, "*in Troas with Karpus,*" 2 Tim. iv. 13.) and, probably, *his books* alſo, is not to be diſputed; but we have no warrant to ſuppoſe that he "FORGOT" either cloak or books, unleſs we may be allowed to confound all due diſcrimination of words and their ſeparate ſenſes for the ſake of a *bon-mot*. And even this circumſtance of the apoſtle's having "*left his cloak and his parchments at Troas*" (immaterial as it may ſeem at firſt ſight) is not to be eſteemed "*of no importance at all*;" for this teaches us that the apoſtle "*(though under a* WATCHFUL PROVIDENCE) *found it neceſſary to provide againſt ſuch natural infirmities as it is committed to the guardianſhip of human care to fence againſt; and, though he was inſtructed with an abundance of revelations,*" (yet) "*that did not ſuperſede the neceſſity and uſe of books, for ſuch improvement in knowledge as was within the power of human induſtry.*" (See Mr. Ridley's Sermon preached before the hon. Truſtees for eſtabliſhing the Colony of Georgia, and the Aſſociates of Dr. Bray, in 1746, p. 15.)

Theſe

ſrom thence, (exactly what an opponent would wiſh to fix upon him,) but, alſo, that it is a concluſion expreſsly acknowledged, even in his own words, (ſee p. 17. that "*thoſe, who cannot make ſhift* "*with ſuch a parliament, muſt have none,*" &c.) we may fairly ſuppoſe, that he is not more ſerious in this than in moſt of his other poſitions, and, of courſe, that "*the ſchemes preſented to the public by real* "*and pretended patriots, that is,*" (as he ſays,) "*by thoſe who have more honeſty* "*than ſenſe, and thoſe who have more* "*ſenſe*

Theſe *occurrences*, therefore, I hope, will at length prove both "*important*" and "*profitable*" even to the celebrated writer himſelf; becauſe a careful review of them, as *related in ſcripture*, muſt convince him that he has been too haſty and ſuperficial in his citations; whereby he himſelf ſtands as much in need of "*reproof*" as his celebrated writings do of "*correction*;" ſo that his good ſenſe, I hope, will incline him to *profit* by the "*inſtruction*" which neceſſarily ariſes from theſe two *humiliating* circumſtances: and, if ever he ſhould conceive that I may be able to aſſiſt his farther *improvement* by the removal of any apprehended difficulties, he may aſſuredly command my beſt endeavours.

"*ſenſe than honeſty*," are not the only objects of this ſubtle writer's irony, but that he meant equally to ridicule the whole pack of their yelping *opponents*, even his ſtaunch old friends, the penſioned advocates for *corruption* and "*good* "*government*," (as they are pleaſed to call it,) by ſetting them full cry upon falſe ſcents of untenable arguments!

But, if I am deceived in attributing to him a deeper "*ſenſe*," and more "*honeſty*" at bottom, than, perhaps, he is willing to acknowledge, yet I ſhould be ſorry to fall into the contrary extreme of imputing to him any degree of that unhappy diſproportion between "*ſenſe*" and "*honeſty*" which he himſelf, without the leaſt ſcruple, ſo quaintly and facetiouſly imputes to every other perſon that has written upon the ſubject! Common charity, therefore, obliges me to give him credit, at leaſt, for the *honeſty* of meaning well, howſo-

ever

ever wide his arguments may be from truth and loyalty; and, as to his *ſenſe*, I have never preſumed to queſtion it, but only the *uſe*, or rather the *abuſe*, he has made of it; for, after all, my hopes of being pardoned, for the freedom of theſe remarks, muſt rely on his *good ſenſe*, and I ſincerely deſire to experience ſo notable an inſtance of it, though I am far from expecting the farther ſatisfaction of *receiving his thanks* for my labour and pains in ſearching and propoſing an *effectual remedy* to the "*one capital defect*" of his moſt eligible plan of reformation, becauſe a removal of this *defect* (in his opinion, it ſeems) would deprive the *favoured* plan of "*its chief excellence*," viz. its ſuppoſed *impracticability*; an *excellence*, however, to be reliſhed only by profeſſed *enemies to reformation and order!* "*To be* "*convinced of the* IMPRACTICABILITY "*of this ſcheme*," (ſays he in p. 6.) "*let*

" *us but figure to ourſelves* multitudes *of*
" *all deſcriptions and denominations called*
" *out to exerciſe their right of voting, in-*
" *flamed by conteſt and intoxicated by li-*
" *quor*;" &c.

But it is more reaſonable, in the firſt place, to conſider the actual ſtate of things; "*let us*," therefore, rather "*fi-*
" *gure to ourſelves*" (what is really the caſe at preſent) "*multitudes of all deſcrip-*
" *tions and denominations*" actually "*call-*
" *ed out*" (not indeed "*to exerciſe their*
" RIGHT *of voting*," but what is far more dangerous to the community) "*to*
" *exerciſe*" the WRONG *of preventing others from voting*, by tumultuouſly obſtructing every avenue to the poll-books, and raving with all the horrible malice that the devil and drunkenneſs can inſpire, that they may intimidate and hinder quiet electors, that really "*have the right of*
" *voting*," from "*exerciſing their right!*"

ſo

ſo that *elections* can be no longer *free* whilſt ſuch notorious *menacing*, and open violence, is ſo generally tolerated! "*Let* "*us*," alſo "*figure to ourſelves*" (for, the horrible ſcenes have been too recently imprinted on our memories to be eaſily effaced) theſe ſubborned "*multitudes of all* "*deſcriptions*," and beyond all deſcription, or of no deſcription at all, as much "*in-*"*flamed by conteſt and intoxicated by li-*"*quor*" as they poſſibly could be, even if admitted to a "*right of voting*:"— "*weavers from their looms, and miners* "*from tinneries and coal-pits*; *ſailors* "*from their ſhips, and ſoldiers from their* "*quarters*; *to whom we muſt add*," (as the celebrated author has done,) "*thou-*"*ſands of thieves, ſmugglers, rogues, va-*"*gabonds, and vagrants*;" and "*we* "*muſt add*," alſo, ſelect troops of Iriſh chairmen from the environs of the polite gaming-houſes, and whole bands of jour-

heymen-butchers, the very ſcum and offal of all the ſhambles, brandiſhing their formidable cleavers! "*I ſay, let us figure* "*to ourſelves all theſe reſpectable*" hinderers and obſtructors of *free* election, "*let* "*loose*," not only for "*one day*," but for many days together, "*throughout every* "*part of the kingdom, and ſuch a ſcene of* "*confuſion, of drunkenneſs and riot, of* "*rapine*," and even of "*murder!*" &c. "*will preſent itſelf*" (by due recollection of very recent facts, more ſtrongly than by mere *imagination*) "*as muſt ſhock us*," indeed, "*with horror*," and ought, therefore, to convince us, that we already experience the moſt conſummate miſchiefs and inconveniences that can poſſibly ariſe either from the *multitude* or the *meanneſs* of the perſons that uſually attend elections! What, then, muſt we think of the *morality* and *patriotiſm* of thoſe perſons, who regularly oppoſe every attempt to

reform

reform theſe intolerable grievances and corruptions?

With reſpect to the *danger* which the celebrated author apprehends, from all the rabble being "*let looſe, in one day, throughout every part of the kingdom,*" it is a mere bugbear: are they not, at preſent, frequently "*let looſe, in one day, throughout every part of the kingdom,*" even "*one day*" in every week? Nay, are they not at liberty *any day*, or *every day*, to be as "*looſe,*" if they pleaſe, as thoſe haughty perſons who falſely eſteem themſelves ſo much their betters? and yet perhaps they are *not more licentious*, though certainly *much leſs guilty*, than their unprincipled CORRUPTORS, a great majority of "*the honourable gentlemen,*" as they call themſelves, who ſolicit their favour at elections, to whom *all the mobs* and *all the miſchiefs*, on thoſe occaſions, are chiefly to be attributed; for, thoſe

men

men who bribe, treat, lead, and excite, theſe diſorderly *multitudes*, cannot ſurely be exempted, by their rank, titles, or fortunes, from being deemed a *part of the mob*, when they are notoriouſly the moſt *guilty and vicious part* of it, by being principals and movers of the rabble!

And ſuch men ſhould remember, that the vile practices of *opening houſes for election-purpoſes* is a ſpecies of *bribery*, not only the moſt *pernicious* to the people and kingdom, but alſo the moſt effectually *degrading* to themſelves; becauſe they are thereby abſolutely *incapacitated, in law*, to take their ſeats; (ſee note in p. 48.) and therefore all thoſe perſons, that may fairly be convicted of this moſt *pernicious* and *degrading* miſdemeanour, ought moſt certainly (for the honour of the houſe) to be ejected! "*Let us alſo figure* "*to ourſelves*" the preſent inconvenient and hopeleſs method of *determining diſ-*

puted

puted and undue elections, and alſo the *lamentable number of them*, by which the precious time and attention of the great *national council* muſt be principally engroſſed, to the manifeſt hindrance of national buſineſs: whereas in ancient times, when *general elections* throughout the kingdom were "*every year once and* "*more often if need be*;" viz. previous to *every ſeſſion* of parliament, though the *ſeſſions* were held not only *annually*, but often twice, and ſometimes three and four times, in a year, yet "*there were* "*not above two or three caſes of elections* "*queſtioned, or complained of, for above* "200 *years!*" (ſee "the Legal Means of "Political Reformation," p. 32 and 55.) ſo that a reſtoration of our ancient parliamentary rights, and a due reformation of modern abuſes and *innovations*, are unqueſtionably neceſſary to be demanded now that the exerciſe of our ineſtimable franchiſes is ſunk down (through the

enormous

enormous diſproportion of popular Repreſentation) to the very *loweſt degree* of poſſible exiſtence, and that all our public circumſtances are really tainted with the moſt *noxious corruption* imaginable! exceeding any *ſuperlative of it* that can either be expreſſed or even conceived! In ſhort, there is but *one degree lower, in humiliation and baſeneſs*, to which the nation can poſſibly deſcend! and that would be to adopt the wicked and *diſloyal* poſition of this celebrated writer, viz. that "*thoſe who cannot make ſhift with ſuch a* "*parliament muſt have none.*" For, to be contented, like him, "*to make ſhift with* "*ſuch a parliament*," would certainly be the *loweſt degree* of *parliamentary corruption*; for, it cannot deſcend any lower, as I have already remarked, without actually loſing its exiſtence; and therefore *the one degree lower* would be to admit this gentleman's baneful alternative, the

having

having no parliament at all; which is certainly *the loweſt degree of* POLITICAL SLAVERY!

The *neceſſity*, therefore, of "*a parliamentary reform*" is UNQUESTIONABLE, notwithſtanding this celebrated writer's "*Thoughts*" to the contrary; and the *practicability* of it will be equally certain, if the *conſtitutional remedy* to the preſent national *immorality* and *corruption* is but previouſly applied, viz. a due *re-eſtabliſhment of the ancient* VIEW *of* FRANKPLEDGE, with all its *juſt* and *legal* uſages and appendages; for this is the true *ſtate-antiſeptic* which will ſicken the *worms of undue influence*, and put an effectual ſtop to their baneful progreſs on the vitals of the Engliſh conſtitution; eſpecially if ſome farther reaſonable and very neceſſary heads of *enquiry* be added to the *articles of annual inqueſt*, which I have already ſtated in pages 112 to 132, and ought to be in-

ſerted after the 33d article, ("Of all man-
" ner of conſpirators,") leaving the arti-
cle, there diſtinguiſhed by the number 34,
for the concluſion of the whole.

Item, (34.) Whether the " *Elections*
" *of members to parliament have been free-*
" *ly and indifferently made without charge*
" *or expence,*" as required by the laws of
this kingdom? See 7 and 8 W. III. c. iv.
A. D. 1695. and 2 Geo. II. c. 24. A. D.
1729. What perſon or perſons have re-
ceived *bribes* of any kind, or have *eaten or*
drunk (the moſt pernicious participation
of *bribery*) at the expence of others du-
ring the time of an *election?* The penalty
of receiving any " *reward whatſoever,*" on
ſuch occaſions, is 500l. beſides an *incapa-*
city from ever voting again: ſee ſtat. 2
Geo. II. c. 24. And *meat and drink, enter-*
tainment or proviſion, are expreſsly deemed
articles of *reward* in the previous ſtatute
of king William. See note in p. 48.

35. What

35. What attornies, or other perſons, have been agents in diſtributing money, or other reward of any kind, or in promiſing reward or emolument during the time of an election?

36. What public houſes have been *opened* (a term ſufficiently underſtood by the notorious practice of it) for the purpoſe of influencing any election after the teſte of the writ, or after the place became vacant? and who hath paid (or hath undertaken to pay, and is, directly or indirectly, reſponſible) for the expences incurred by ſuch public and unlawful entertainment? If the proofs on this head can be fairly traced, ſo as to criminate the *perſons elected*, they are thereby effectually incapacitated from holding their unjuſtly-acquired ſeats in parliament, and by virtue of the above-mentioned ſtatute of 7 and 8 William III. are "*to be deemed* "*and taken* no *members in parliament*;

" *and ſhall not act, ſit, or have any vote* " *or place,* &c. *as if they had never been* " *returned or elected members for the par-* " *liament*;" and the act does not limit the conviction to any fixed period of time after the offence; ſo that there is ample leiſure and opportunity for reſearches on that head; which all true friends to the *honour and dignity of parliament* ought to promote.

37. What publican or victualler hath ſupplied " meat, drink, *entertainment*, or " *proviſion*," during the time of an election, to any perſon or perſons whom they might juſtly have ſuſpected of not intending to pay for the ſame at their own coſt and charge? For, in this caſe, the publican is as much a criminal agent in *bribery* as the petty-fogging attorney who *bribes* with caſh, notes, or promiſes; and is equally liable to all the penalties of *bribery*.

38. And

38. And what perſon hath made any diſburſements or expenditure whatſoever, either in his own behalf or in truſt for others, or even promiſe of expenditure, or re-payment, directly or indirectly, to promote ſuch diſhoneſt and baneful practices againſt the peace and welfare of the community?

There is no doubt but that regular *annual* enquiries upon oath, in all parts of the kingdom, on theſe points, would put an effectual ſtop to the *expences* and *corruption* of elections, and conſequently to the *tumults* and other immoralities of them, whereby the trite argument againſt the *conſtitutional frequency of elections* would, of courſe, be ſuperſeded; ſo that the ancient right of newly electing our repreſentatives for *every ſeſſion of parliament* might again be happily reſtored, without either *inconvenience* to the electors or *expence* to the candidates.

And,

And, laſtly, as the original intention of theſe legal diviſions of the people into *tithings* and *hundreds* was obviouſly for *military* as well as *civil* purpoſes, ſome other additional articles of enquiry will alſo be neceſſary to re-eſtabliſh and maintain the ancient *legal military duties* of the people in a regular WATCH and WARD throughout the kingdom, in order to prevent every ſpecies of *robbery*, *riot*, or other *violence* whatſoever, by internal enemies, as well as to be thoroughly prepared, without the enormous and ruinous expence which at preſent is thought neceſſary, againſt the apprehenſions of invaſions by foreign enemies.

That this was an ancient object of enquiry at *views of Frankpledge* is manifeſt, by the article which I cited from *Fleta* in p. 138. n. viz. "*Item de vigiliis non obſervatis.*" "*Alſo concerning watches not duly obſerved.*"

That

That the ancient and true conſtitution of the Engliſh ſtate abſolutely requires every man (the clergy and judges excepted) to have *arms*, and to be duly *trained* and *exerciſed* in the uſe of them, I have amply proved in my "*Tracts on the Means* "*of National Defence*;" ſo that, from thence, it will be very eaſy to form ſuch *additional articles of enquiry* as may be neceſſary to reſtore and preſerve theſe two great national objects, the *general arming* and *training* of the people to military ſervices in WATCH and WARD; whereby the imaginary neceſſity of maintaining *a numerous ſtanding army in conſtant pay* (the moſt dangerous and unconſtitutional of all our modern *innovations)* will be effectually ſuperſeded, and, of courſe, a probable means and opportunity would thereby be laid open to a *virtuous* adminiſtration of government (a title that will moſt certainly be due to any adminiſtration that ſhall adopt and reſtore the *juſt*

and

and *free* conſtitution of *tithings* and *hundreds* in their ancient *legal* purity) of crowning their ſucceſs, in reformation, with an effectual reduction of the *national debt* and *taxes*, by means of the great annual ſavings that would ariſe from a proper *gradual decreaſe* * of the duties of our *preſent military eſtabliſhments*.

The

* I ſay a *gradual decreaſe*, becauſe I wiſh the reduction of our armies to be made without injury or any material inconvenience to the brave officers and men that have faithfully ſerved therein, to whom are certainly due all the kindneſs and reaſonable liberality that the nation can afford to ſhew them; and, though I am a *profeſſed* enemy to STANDING ARMIES in general, yet, at the ſame time, I *profeſs*, and really entertain, a very cordial regard and benevolence to the deſerving *individuals* of which they are compoſed. The kind of reduction, therefore, which I wiſh to ſee, is ſuch as they themſelves, I believe, would not think either *unjuſt* or *hard* upon them; and yet, I truſt, that *the ſavings*, ariſing from it, would be as *effectual* and *ſpeedy* as thoſe of any other plan that the nation can (with conſiſtent honour and due liberality to the parties) adopt. Let us, therefore, ſuppoſe a reduction to be made *by time*, rather than by the *involuntary diſcharge* of any one; and by putting an *entire ſtop to recruiting*, *and to the granting of any new commiſſions*, rather than by the *ſtoppage* of pay.

Let

The duties of *watch* and *ward*, or *guard*, were rendered light and eaſy, by

Let *diſcharges*, however, be *freely granted* to all that *requeſt* them; and let *liberal bounties* (in proportion to rank and pay) be given to incite *ſuch requeſts*; that induſtrious ſubaltern officers and men may be encouraged and enabled to engage themſelves in *civil* occupations. A preference ſhould alſo be given, in the diſpoſal of lucrative *civil* employments under the crown, (in ſuch employments, I mean, as are neceſſary to be continued,) to deſerving officers that are properly qualified for them, provided they give up their *military* commiſſions and profeſſion; which would much haſten the reduction of the army and *its expences*.

The corps of *Engineers* and the regiment of *Artillery*, however, are branches of the military eſtabliſhment which cannot ſo ſafely be reduced, or, at leaſt, not in ſo great a degree, as the other military corps, becauſe they cannot ſo eaſily as other regiments be raiſed again, in caſe of any ſudden want of them; a regular education being neceſſary, for *engineers* and *artillery*-officers, in the ſtudy of mathematics, projectiles, mechanics, military architecture, ſurveying, drawing, &c. But a proper eſtabliſhment in theſe two branches (duly maintained in ſtudy and practice) would, in caſe of any ſudden emergency, enable the *preſent national militia*, and the *trained hundreds* and *thouſands*, or HOSTS of the people, in their *rotations* of ſervice, to oppoſe, with ſufficient effect, any power (humanly ſpeaking) that could poſſibly be brought againſt them. I have here ſuppoſed the *national militia* to remain on its preſent eſtabliſhment; for, though

an *equal ſervice* of the whole body of the people "*in rotation*;" for which the modern term is "*a roſter of ſervice.*" See "Leges Gulielmi Regis," as publiſhed in Lambard's Archionomia, (1ſt edit. 4to, 1568. fol. 125.) Statuimus, &c. "*We ordain, that all the Cities, and Boroughs, and Caſtles, and Hundreds, and Wapentakes, of our whole kingdom aforeſaid, ſhall every night be watched and guarded*" IN GYRUM" (i. e. into a circle, or rather

though I contend that the *hundreds* and *tithings*, when duly *trained*, form the true *conſtitutional militia* of this kingdom, yet, until that happy legal conſtitution can be ſo effectually re-eſtabliſhed as to be deemed of itſelf ſufficient for the national defence, I ſhould be very unwilling to propoſe any alteration in the preſent eſtabliſhment of militia for the counties, except, indeed, ſome ſuch obvious amendments as may render it leſs burdenſome and ruinous to poor labourers, by throwing a more adequate proportion of the expence upon thoſe that can better afford it; and alſo to prevent any man from being detained from home (after he is duly diſciplined) longer than *a month* (or ſix weeks at moſt) at any one time in actual ſervice, leſt he ſhould thereby loſe his *civil* occupation and become a *mere* ſoldier. See "*Tracts on the Means of National Defence by a free Militia*," p. 47, 59, 66-68, 86, 87.

rather by " a ROTATION," viz. a roſter of ſervice) " *againſt crimes and enemies,* " *according as the ſherifes, and aldermen,* " *and magiſtrates, and our miniſters, ſhall* " *beſt provide, by common council, for the* " *welfare of the kingdom.*" And a little farther he adds, " ſtatuimus et firmiter " præcipimus," &c. " *We ordain and* " *ſtrictly command, that all earls, barons,* " *knights, miniſters,*" (ſervientes, or ſerjeants,) " *and* ALL THE FREEMEN *of our* " *whole kingdom aforeſaid,*" (univerſi liberi homines totius regni noſtri prædicti,) " *ſhall have and hold themſelves always* " *well* IN ARMS *and horſes, as it is fit and* " *right, and that they may be always ready* " *and prepared to fulfil their* ENTIRE " SERVICE TO US, *and effectually to act* " *whenever there ſhall be occaſion, accord-* " *ing to the duty which they ought to do of* " *right* (de jure) *to us, for their lands* " *and tenements, and according as we*

 " *command*

" *command them by the* COMMON-COUN-
" CIL" (i. e. by the parliament) " *of*
" *the whole kingdom aforeſaid.*" And this ENTIRE SERVICE TO THE KING, thus duly limited by the national COMMON-COUNCIL of the WHOLE KINGDOM, was rendered ſtill more ſuitable to the dignity of a *free people*, by the ENTIRE ELECTION alſo, among themſelves, of all their officers; not only of the *tithing-men* (who had the *civil* power of *conſtables* and the *military* authority of *ſerjeants*) and of the *hundreders*, (who had the *civil* authority of *high conſtables* and *juſticiaries* and the *military* rank of *captains*,) but alſo of the *viſcounts*, or *ſheriffs*, and of the *heretochii*, the commanders or leaders of the army; " DUCTORES EXERCITUS." " *The*
" *ſame*" (ſays the learned judge Atkins*)
" *as*,

* See Judge Atkins's " Parliamentary and Political
" Tracts," p. 253, 254. " Sir Edw. Coke, in his 2d Inſt."
(ſays Judge Atkins,) " in his expoſition of the ſtatute of
" Weſtminſter,

" *as, in the dialect of this preſent age, may* " *be called the lord-lieutenants, or deputy-* " *lieutenants.*" For this the learned judge refers us to the law of K. Edward above cited.* This law alſo provides, in terms

" Weſtminſter, 1 cap. 10. concerning the election of the " coroners by the freeholders, (which ever was ſo, and " ſo ſtill continues,) ſays, there is the ſame reaſon for " election of ſheriffs, and ſo (ſays he) it anciently was " by writ directed to the coroners. In like manner" (continues Judge Atkins) " were the conſervators of the " peace choſen, in whoſe place the juſtices of the peace " now ſucceed, and ſo the verdurers of the foreſt are to " this day. Theſe were great and high liberties, and " did belong to the *freeholders*" (by which he muſt mean the *liberi tenentes*, the free-*holder* in *burgage* tenure, viz. the *houſe-holders*, or *Deceners*, as well as others) " from " all antiquity, and are ſtrong arguments to confirm " thoſe late authors that will by no means allow of a " limited government, but leave us under an arbitrary " power, and who call our laws and liberties but the " conceſſions and condeſcenſions from the regal and " abſolute power."

* " *Iſti vero viri*" (ſpeaking of the HERETOCHII) " *eligebantur per commune concilium pro communi utilitate* " *regni, per provincias et patrias univerſas et per ſingulos* " *comitatus in* PLENO FOLKMOTE†, *ſicut et* VICE-" CO-

† This *full folkmote*, for the election of *beretoches*, or *lord-lieutenants*, and of the *ſheriffs*, was ordered to be held every year in the beginning of

terms equally ſtrong, for the *general arming of the people*, as the act of K. William does

" COMITES *provinciarum et comitatuum* ELIGI DE-" BENT." " This law" (ſays the learned Judge Atkins) " mentions this election as an uſe and cuſtom."

I muſt, however, remark, that this quotation is taken from that part of K. Edward's laws which is printed in *italics* in Mr. Lambard's edition, and which Mr. Prynne calls a " *ſpurious edition*;" and he cites a much higher authority (that of the learned Abp. Uſher) for the ſame opinion. Mr. Lambard himſelf, however, informs us, that there were two different examplars: the one, " *per* " *antiquum*," " very ancient;" and " the other" (ſays he) " *is not, indeed, ſo ancient; which, however, con-* " *tains more:*" (" alterum non ita ſanè vetus, quod tamen " plura complectatur.") And he informs us, that he himſelf, " *after making diligent compariſon of them, had* " *joined both together, in ſuch a manner, however,*" (ſays he,) " *that the whole of the old exemplar is expreſſed in the* " LARGER *letters*," (i. e. the Roman,) " *but whatever* " *is expreſſed in the* LESSER *characters*" *(the Italics)* " is " to be attributed (ſays he) to *the* LATER *copy:*" (" quæ " minoribus vero deſcribuntur caracteribus, ea recen-" tiori ſunt tribuenda." But he does not expreſs the leaſt ſuſpicion that the latter is *ſpurious:* and he was ſurely a very competent judge of that matter, as being one of the moſt

of October by the ſame law. " Item aliud *folkmote* eſſe debet in quo-" libet comitatu per provincias et patrias totius regni prædicti univerſas, " ſcilicet in capite kl. Octob. ad providendum ibi quis erit *Vice-comes*, " et qui erunt eorum *Heretochii*, et ad audiendum ibi juſta eorum pre-" cepta concilio et aſſenſu procerum et judicio folkſmote," &c.

does for "*the entire ſervice of the king*," ſee "cap. 35. de Greve." "DEBENT "*enim*

moſt eminent antiquarians of his time. And the Rev. Dr. David Wilkins, who printed an edition of the Anglo-Saxon Laws, in 1721, has ſet forth the laws of K. Edward, without diſtinguiſhing, by Roman and Italic letters, the various readings of the two eminent exemplars before-mentioned, (as Lambard and Whelock had done before him,) ſo that he manifeſtly thought it right to adopt the additions in *italics* as properly belonging to the text, (though rejected by Mr. Prynne,) or he would not thus have omitted the diſtinctions between the two exemplars.

Whatever objections Abp. Uſher might have had to ſome of the hiſtorical circumſtances related in this exemplar of K. Edward's laws, (as, for inſtance, the correſpondence between pope *Elutherius* and the Britiſh king *Lucius*, the extenſive conqueſts of king *Arthur*, &c.) yet, as theſe circumſtances were generally received for hiſtorical *facts* long before the fourth year of K. William I. (when theſe *Laws of Edward* were newly collected * and

* Theſe laws were newly collected in the 4th year of K. William I. by a parliament *elected* and called together expreſsly for that purpoſe; and the manner of the repreſentation was remarkable. Twelve repreſentatives were elected for each county of the whole kingdom, and were ſworn, before the king, (after the manner of a *jury*,) that they would, to the beſt of their power, without departing, either to the right or the left, from the path of truth, declare their *laws* and *cuſtoms*, nothing omitting, nothing adding, nothing changing, by prevarication, &c. "Poſt acquiſitionem Angliæ, *præfatus* Rex *Angliæ* "Gulielmus quarto anno regni ſui, conſilio Baronum ſuorum fecit "ſummoniri per univerſos Angliæ conſulatus Anglos nobiles, ſapientes, "et

" *enim* UNIVERSI LIBERI HOMINES TO-
" TIUS REGNI, juxta *facultates ſuas et*
" *poſſeſſiones*,

and digeſted into the preſent form, as appears by the firſt article,) the inſertion of them into a manuſcript, alleged to be of that age, cannot (even if they were falſe) afford any proof againſt the originality of the manuſcript, becauſe the writers of that age, in general, believed theſe circumſtances to be *facts*, and might, therefore, with great probability, be ſuppoſed to have inſerted them.

And, as to Mr. Prynne's exception, in his brief animadverſions, &c. on the fourth part of the Inſtitutes, &c. compiled by Sir Edw. Coke, (p. 189) it is manifeſtly founded on a mere *literal* error of the tranſcriber of the M.S. which by no means injures the general credit of the copy and its other contents. Mr. Prynne ſays, " I " cannot but take notice of one groſſe miſtake, in the " *ſpurious addition* to the laws of K. Edward the Con- " feſſor, in Mr. Lambert, cited in the 2d Inſt. p. 70. " concerning the antiquity of the *folkmote*, or *court-leet*, " and adminiſtering the oath of allegiance in it to the " people; *ad defendendum regnum*, &c. *Hanc legem inve-* " *nit* ARTHURUS *(qui quondam fuit incl)tiſſimus rex* BRI- " TONUM) *et ita conſolidavit et confœderavit regnum* BRI-
" TANNIÆ

" et ſua lege eruditos, ut eorum leges, & jura; & conſuetudines ab ipſis " audiret. *Electi igitur de ſingulis totius patriæ comitatibus viri Duode-* " *cem, jurejurando coram rege primum confirmaverunt*, ut quoad poſſent " recto tramite *incidentes, nec ad dextram nec ad ſiniſtram divertentes*, " legum ſuarum & conſuetudinum ſancita patefacerent, nihil præter- " mittentes, nil addentes, nil prævaricando mutantes. A legibus " igitur ſanctæ matris eccleſiæ ſumentes exordium, quoniam per eam " Rex & regnum ſolidum ſubſiſtendi habet fundamentum, leges, li- " bertates, & pacem ipſius concionati ſunt, dicentes."

" *poſſeſſiones, et juxta catalla ſua, et ſecun-*
" *dum feodum ſuum, et ſecundum tenementa*

 " *ſua,*

" TANNIÆ *univerſum ſemper in unum. Hujus legis* AU-
" THORITATE" (meaning the authority or happy effect of free-*folkmotes*, or *court-leets*, i.e. the incomparable conſtitution of *Frankpledge*, which I now wiſh to recommend for the ſame purpoſe, viz. to *unite* the whole nation in one *confederated* body by an univerſal eſtabliſhment of *the law which Arthur found*, with all its juſt and legal uſages) " *expulit* ARTHURUS *prædictus* SARA-
" CENOS *et inimicos a regno.* When, as it is moſt clear" (ſays Mr. Prynne) " by Galfridus Monmuthenſis, Mat. " Weſtminſter, Radulfus Ceſtrenſis, Ponticus Verum-
" nius, &c. An. Dom. 516 to 542; and other our an-
" cient and modern hiſtorians, who write of king *Arthur*,
" record, that he *only* fought his ſeveral battles with
" the *Saxons*, Scots, Picts, whom he expelled out of the
" realm, but not with the SARACENS, who never
" infeſted nor entered our *Iſland*, nor mention any ſuch
" oath, law, court, preſcribed or held by him." Now that K. ARTHUR *fought* with the *Saxons*, *Scots*, *Picts*, &c. muſt be readily allowed, and alſo that he *fought not* with the SARACENS; but, if we conſider the mention of " SARACENOS" as a mere literary miſtake of an ignorant tranſcriber for SCANIOS or SCANDIOS, (an ancient name, much leſs known to the vulgar, at the time when this copy was written, than that of the SARACENS) there will be no cauſe for farther cavil againſt the authenticity of the copy, becauſe ſuch a miſtake in a copy ought not to injure the credit of the original compiler of the work. And that the word SCANIOS, or SCANDIOS,

was

" *ſua,* ARMA HABERE, *et illa ſemper*
" *prompta conſervare ad tuitionem regni,*"
&c.

That

was really intended, is manifeſt from the context, (two pages farther,) wherein expreſs mention is made of K. *Arthur*'s conqueſt of *Scantia* and *Gutland*, the countries from whence proceeded the moſt of Arthur's enemies, even the *Saxons* themſelves originally, (ſee Sheringham de Anglorum Gentis Origine,) if not the *Picts* alſo, the very nations mentioned by Mr. Prynne himſelf, and alſo by all the authors to whom he has appealed.

There is juſt ſuch another *mere literal* miſtake, a few pages farther, which, without proper warning, might ſtill farther induce a ſuperficial reader to ſuſpect the authenticity of the exemplar; I mean the paſſage where mention is made of the election of king Ina, viz. " *qui* " *electus fuit in regem per* ANGELUM," " *who was elected* " *king through*" (or by means of) " AN ANGEL, (a very improbable circumſtance,) inſtead of the obvious meaning of the original writer, i. e. " *per* ANGLIAM" " *throughout* ENGLAND." For, this latter ſenſe is clearly ſupported by the context immediately following, which relates, that " *Ina firſt obtained the monarchy of* " *this* WHOLE KINGDOM," &c. " *et qui* PRIMO *obtinuit* " *monarchiam* TOTIUS REGNI HUJUS *poſt adventum* AN- " GLORUM *in Brytanniam.* PRIMUS *enim fuit rex co-* " *ronatus* ANGLORUM ET BRYTONUM SIMUL MANEN- " TIUM IN BRITANNIA *poſt adventum Saxonum,*" &c. And, a little farther, the text relates that he obtained *Wales* and *Cornwall* by his ſecond wife, as alſo the conſecrated Britiſh crown, which belonged to the laſt Britiſh king, Cadwallader; ſo that the circumſtance manifeſtly

That "ALL FREE-MEN OF THE WHOLE "*kingdom, according to their* means, &c.

C c 2 "OUGHT

feſtly intended to be expreſſed was the *general acknowledgement of* INA, *as king over both the* ENGLISH and the BRITONS, that is, "*per Angliam*," "*throughout all Eng-*"*land*;" and not "*per Angelum.*" Nevertheleſs theſe two palpable errors of tranſcribers have been copied in all the ſubſequent editions of K. Edward's laws, without the leaſt animadverſion of the publiſhers to clear the original compilers, and their work, from the diſcredit of ſuch improbable circumſtances.

With reſpect to Mr. Prynne's objection to the antiquity of the *hundred* courts, as declared in this addition to K. Edward's laws, viz. that "*Arthur found this law*," "*Hanc legem invenit Arthurus*," &c. "and ſo" (by means thereof) "*united and confederated the whole king-*"*dom of Britain into one*," (et ita conſolidavit et confœderavit regnum Britanniæ univerſum ſemper in unum;) and that "*by virtue of* THIS LAW *the ſaid Arthur drove* "*the* SCANTIANS (or Scandinavinians) *and enemies out of* "*the kingdom*," &c. I muſt obſerve that Mr. Prynne has aſſigned nothing but *negative evidence* againſt the fact, which is by no means ſufficient to diſprove it. On the other hand, as *Arthur* did really ſucceed in *uniting* and *ſtrengthening* the kingdom againſt his *enemies*, the other part of the ſentence is the more probable, (that "*he found* "*this law*,") becauſe he certainly could not have purſued a more effectual and ſpeedy means of reſtoring a divided and weakened kingdom than by reviving and enforcing "*this law*," which he is ſaid to have *found*; and, had he been as careful, *after his ſucceſs, to*

maintain

" OUGHT TO HAVE ARMS, *and thoſe al-*
" *ways to keep ready for the defence of the*
" *kingdom.*"

By

maintain " *this law,*" and to eſtabliſh it in the countries which he conquered, with *free* and *equal* liberty to all the inhabitants, the happy effects of his ſucceſs would not have had ſo ſhort a duration.

For, though the Britons certainly *had* " *this law*" both before and after the time of *Arthur*, yet they generally *had* it rather in *name* than in *uſe*, or elſe they would certainly have been *leſs diſſolute* in their morals, and more *united* and powerful againſt their enemies. They *had* " *this law*," I may ſay, much in the ſame manner as we *have* it at this day; it was really the *law of the kingdom*, but not duly maintained; the *nominal diviſions* remained, as at preſent, but theſe diviſions became *local* inſtead of *popular*; the mere *diviſions of ſpace*, inſtead of exact numerical *diviſions of the people*, which " *this law*" requires to be effective. A ſufficient anſwer to Mr. Prynne's objection, againſt the antiquity of " *this law*," may be gathered from a former part of this tract, (p. 33-36.) where I have referred to ample evidence that the *diviſions of hundreds and tithings* (CENTURIÆ * and

DE-

* " CENTURIATA COMITIA. Thoſe *Comitia*, or aſſemblies of " the people of *Rome*, by *Centuries*, where every one gave his vote " in his *century*. Theſe ſorts of aſſemblies were firſt inſtituted by *Ser-* " *vius Tullius*, who divided, as is above ſaid, the people into ſix *claſſes*, " and each *claſſis* into CENTURIES. Theſe aſſemblies had a great " ſhare in ordering of all ſtate-affairs, for they were ſummoned toge- " ther to make great officers, to approve any new law, to proclaim " war againſt any people, and to implead any citizen of Rome after " his

By the ſame law they were reſtrained from *pawning* their arms. " *Non de-*

" *bent*

DECURIÆ *) were in uſe with the Roman colonies in Britain, both in their *civil* and *military* government; and that the *Britons* were incorporated in thoſe colonies; ſo that it was very natural for the Britons afterwards to retain ſomething of the ſame kind (though badly obſerved) in the *civil* conſtitution of Britain, differing, for the moſt part, only in names and titles, from the future *Saxon* conſtitution: as, for inſtance, (according to information† from this copy of K. Edward's laws,) " *what* " *is now called a* COUNTY *was formerly with the* BRI- " TONS *in the times of the* ROMANS *in this kingdom of* " BRITAIN *called* CONSULATUS. *And thoſe who are* " *now called* VICECOMITES (or ſheriffs) *were then call-* " *ed* VICE-CONSULES, *and he that was called* VICE-CON-

" SUL

" his death. They alſo choſe the conſuls, prætors, cenſors, and " ſometimes the proconſuls and chief prieſts, &c." See Danet's Dict. of Greek and Roman antiquities. What difficulty then can there be in ſuppoſing that " *Arthur found this law*" among the *Britons*, who ſo lately before had been incorporated in the *Roman* colonies of this iſland?

* " Romulus having at firſt divided the *Roman* people into three " tribes, he appointed, at the head of each tribe, a colonel to com- " mand it," (i. e. *the head of a thouſand,*) " and afterwards divided each " tribe into TEN Curiæ, or companies, and appointed a *centurion* or " captain to command an *hundred men*, and a *decurion* to command " *ten* men." Ibid. on the word *Decurio*.

† " Verum quod modo vocatur *comitatus*, olim apud Britones tem- " poribus Romanorum in regno iſto Brytanniæ vocabatur *conſulatus*. " Et qui modo vocantur *vicecomites*, tunc temporis *vice conſules* voca- " bantur, ille vero dicebatur *viceconſul*, qui *conſule* abſente ipſius vices " ſupplebat in *jure* et in *foro*." Leges Edwardi Regis (N° 12.)

" *bent illa invadiare,*" (i. e. pignori ponere,) " *nec extra regnum vendere, ſed* " *hæredibus*

" SUL *was the perſon, who, in the abſence of the conſul, ſup-* " *plyed his place in the law and in the* COURT *.*" And therefore, I think, we may ſafely admit the aſſertion in this copy of K. Edward's law, that " *Arthur found this* " *law,*" (notwithſtanding the authority of Mr. *Prynne* to the contrary,) and that the ſucceſs of the *Britiſh* monarch in *uniting* and confederating, by it, his whole kingdom againſt foreign and domeſtic *enemies*, is an example perfectly ſuitable to the purpoſe of my preſent work †. And, with

* Not only *land-owners*, but alſo *houſholders*, and even *all the inhabitants of a county*, are to be deemed *ſuitors to the county court*. "*Countie court* " *eſt le court de viſcount* ENE TOUTES LES INHABITANTS *deins le coun-* " *tie.*" This is the remark of the learned Mr. *H. Finch* in his *Nomotechnia*, (p. 115.) on the ſtatute of Merton, c. 10. which ordains, that " *every freeman which oweth* SUIT *to the* COUNTY, TRYTHING, HUN- " DRED *and* WARENTAKE, *or to the court of the lord, may freely make* " *his attorney to do theſe* SUITS *for him.*" And this muſt neceſſarily be underſtood from the very nature of *Frankpledge*, becauſe *every man*, according to this *conſtitutional law*, muſt be incorporated in ſome *tithing* and *hundred*, which are the regular component parts of *every county-court*, and not the mere *landholders* alone, as ſome perſons of late have erroneouſly conceived.

† At the time when K. Arthur is ſaid to have "*found this law,*" it was, perhaps, no more in general *uſe* than it is at preſent; for WE, even at this day, may alſo be ſaid to "*find this law,*" that is, we *find it* mentioned in all the law-writers of the beſt authority, as being the *law and conſtitution of the kingdom*, though the *uſage* is certainly loſt. In a caſe ſolemnly argued in the court of common pleas, even ſo late as the 9th K. James, the cuſtom of *Frankpledge* was conſidered as ſtill *exiſting in law*, though it certainly did not *exiſt in uſage*,

" *And*

"*hæredibus ſuis in extremis legare,*" &c. That "*they ought not to pledge them, nor*

"*ſell*

with reſpect to the *variations* in theſe two copies of K. Edward's laws, collated by Mr. Lambard, I may now ſafely remark, (after having removed ſome of the principal objections,) that the *variations* which remain are not ſuch as contradict each other in the leaſt: and, though there is ſtill another copy in *Roger de Hoveden*'s Annals *, which contains the ſame laws for the moſt part, but with many *various* readings, and without the *hiſtorical additions*, yet theſe ſeveral copies contain *no variations*, upon the whole, which can juſtify a rejection of any one of them in favour of another: for it is probable that the moſt learned and loyal people amongſt the Engliſh, in the 4th year of K. William I. would be induced at that time particularly, to prepare collections of their old laws, that they might report and obtain a confirmation of them in the parliament that was then called (a re-

"*And it ſeemed to the court,*" (ſays the reporter, Sir Edw. Coke,) "*that* "*they cannot adjudge him a* CHIEF PLEDGE *upon that verdict,*" (the circumſtances of which are there mentioned,) "*for* LEETS *were divided* "*in* DECURIAS *or* DECENNAS, *unde dicitur* DECENARII *to this day*; *and* "*out of every* TEN, (and one of them being pledge for the other, from "whence the court was called CURTA VISUS FRANCI-PLEGII) *one was* "*called* CAPITALIS PLEGIUS, *ſeu* PRIMARIUS FIDEI JUSSOR; and "in ſome places, at this day, *he is called the* TITHING-MAN, *and, in* "*Yorkſhire,* TENMANTALE." And a little farther he adds, "*and* "*it appeareth by the ſaid act of* 18 Edw. II. *that it ought to be enquired* "*at the* LEET *of all the* CHIEF PLEDGES, *with their* DECENNERS, "*that is, the other* NINE, *appears, by which it appeareth, that the* TENTH "*principal man was the* CHIEF PLEDGE," &c. VI. Report 78.

* See Rerum Anglicarum Scriptores poſt Bedam Præcipui, &c. p. 343-348. London, 1596.

" *ſell them out of the kingdom, but bequeath* " *them to their heirs,*" *&c.*

And, to ſecure obedience to this law, all men, " *univerſi,*" were obliged, one certain day every year " *to ſhew their* " *arms, throughout the whole kingdom,* " *in the cities, in the boroughs, in the* " *caſtles, in the hundreds and wapentakes* " *of the kingdom, which ought to be done*" (ſays this law) " *in the ſame day through-* " *out the whole kingdom, leſt any perſons* " *ſhould accommodate their friends and ac-* " *quaintance*

(a regular *jury* of 12 " *ſapientes, et ſua lege eruditos,*" " *wiſe or diſcrete men, and learned in their law,*" being required to be *elected* and deputed by each county) expreſsly for the purpoſe of *reporting theſe laws:* and that *hiſtorical* parts were probably added to ſome one of the collections even at that time (for no ſubſequent *time* was ſo likely to give occaſion for ſuch an addition) by ſome one or more of theſe *learned* repreſentatives, in order to aſſert the *antiquity* as well as the *certain efficacy* of the excellent conſtitution of *Frankpledge*, by the eminent examples of the *Britiſh* K. ARTHUR, and of the *Saxon* king EDGAR, who, both of them, " *found this* " *law,*" and experienced the happy effects of *reviving* and *enforcing* it.

" *quaintance, with their arms, and they* " *themſelves receive them back in return,* " *and thereby defraud the juſtice of the* " *king, and injure the king and kingdom**."

And the ſame law alſo commanded a juſt and exact obſervance of the *watch*-duty, which could be no otherwiſe, in thoſe ancient times, than by a regular *rotation* of all the people, in *gyrum*, as deſcribed in king William's law, and they were afterwards carefully to provide againſt fires, when they returned home to their houſes. " *Et ut* WARDÆ (i. e. " vigiliæ vel cuſtodiæ) *juſtè et ritè obſer-* " *ventur, et ut cautè deinceps incendiis*

" *ſibi*

* " *Univerſi vero prædicti ſingulis annis in craſtino puri-* " *ficationis beatæ Mariæ debent omni excuſatione remota* " *arma ſua per univerſum regnum oſtendere, ſcil cet in civi-* " *tatibus regni, et in Burgis, et in Caſtellis, et Hundredis,* " *et Wapentachiis, Regni, ſecundum eis quod ſtatutum eſt,* " *et adjudicatum, et juxta quod debent, et idcirco hoc fieri* " *debet uno eodem die per univerſum regnum ut predictum eſt,* " *ne aliqui poſſint arma ſua familiaribus ſuis et notis accom-* " *modare, nec ipſi illa mutuo accipere, ac juſtitiam domini* " *regis defraudare, et dominum regem et regnum offendere.*"

" *ſibi illic provideant, cum ad propria re-*
" *dibunt.*"

The duty of *watch* and *guard*, by the people, was deemed ſo very important in ancient times, (and ſurely ought ſtill ſo to be,) eſpecially in towns and places of more than ordinary reſort, that the law prohibited the holding of *markets* and *fairs* in all places except thoſe that were duly *encloſed* and *fortified*, and in which, of courſe, the inhabitants ought, according to the common law, to perform the duties of *watch and guard*, and be always *prepared and trained in arms*, as above deſcribed, for *the entire ſervice of the king*, in the true legal ſenſe of ſervice, i.e. for the preſervation of the *king's peace* in the effectual prevention of all *tumults* and *riots*; for aiding and aſſiſting the king's courts and their *legal* officers in "*the due* " *proceſs of the law*," and for the effectual ſecurity of all peaceable traders and their

their property. See Leges Gulielmi Regis.

" *Item nullum mercatum vel forum ſit, nec*
" *fieri permittatur niſi in* CIVITATIBUS
" *regni noſtri, et in* BURGIS CLAUSIS, *et*
" MURO VALLATIS, *et* CASTELLIS, *et*
" LOCIS TUTISSIMIS, *ubi conſuetudines*
" *regni noſtri, et jus noſtrum commune, et*
" *dignitates coronæ noſtræ, quæ conſtitutæ*
" *ſunt a bonis prædeceſſoribus noſtris, depe-*
" *rire non poſſunt, nec violari, ſed omnia*
" *ritè, et per* JUDICIUM *et* JUSTITIAM,
" *fieri debent. Et ideo* CASTELLA," (not private *caſtles*, but only ſuch as had a regular eſtabliſhment of *civil* magiſtrates,)
" *et burgi, et civitates ſunt et fundatæ et*
" *ædificatæ, ſcilicet, ad tuitionem gentium*
" *et populorum regni, et ad defenſionem*
" *regni, et idcirco obſervari debent cum*
" *omni libertate, et integritate, et ratione.*"
" *Alſo no* MARKET *or* FAIR *may be, nor*
" *may be permitted to be, except in the ci-*
" *ties of our kingdom, and in encloſed ho-*

 " *roughs,*

" *roughs, fenced with a wall, and in caſtles,*
" *and moſt ſecure places, where the uſages of*
" *our kingdom,*" (ſo that *private caſtles* cannot here be meant, but ſuch *caſtles* only as were governed by regular magiſtrates, according to the common law, as *Newcaſtle, Cheſter, Rocheſter, Colcheſter, Cirenceſter, Biceſter,* &c.) " *and our com-*
" *mon law and the dignities of our crown,*
" *&c. may not be loſt nor defrauded, nor*
" *violated; but all things ought to be done*
" *in due form, and by* JUDGEMENT *and*
" JUSTICE. *And, for this cauſe, caſtles,*" (hereby manifeſtly intending ſuch *caſtles* only as I have deſcribed,) " *and boroughs,*
" *and cities, are eſtabliſhed and built, viz.*
" *for the ſecurity of nations and people, and*
" *for the defence of a kingdom, and there-*
" *fore they ought to be maintained with all*
" *liberty, integrity, and reaſon.*" Thus, every city, town, and borough, was ſuppoſed to contain, within itſelf, a complete

plete eſtabliſhment for maintaining the *common law* and the *dignities of the crown*, and for doing all things *in due form*, and *by* JUDGEMENT *and* JUSTICE, which certainly could not, in any other way, be effected than by theſe *numerical diviſions of the people*; in which the magiſtracy was always duly proportioned to the *number of inhabitants*; ſo that, whether they were *many* or *few*, they were all *equally* manageable. And the *rotation* of duty, by being regularly *circulated* amongſt *all* men, was reduced and rendered eaſy to *all*. The cities of the Iſraelites under the theocracy had the ſame proportion of magiſtrates exactly which our common law requires, and alſo regular *rotations* of public ſervice; but it does not appear that they had our happy conſtitution of *juries*, whereby unexceptional and impartial perſons, *from among the people*, that are neighbours to the parties and the facts, in every cauſe,

are

are appointed the LEGAL JUDGES of it. Had this indiſpenſable conſtitution been a part of *their* law, as it is of *ours*, it is probable they would not ſo ſoon have fallen away from *juſtice* and *judgement*: for they had no ſufficient guard againſt *partiality*. If a man was accuſed, he had no right to reject the magiſtrate from being *his judge*, even though he knew him to be *his enemy*, or the friend and favourer of his accuſer: whereas, in England, a man may challenge and reject 35 jurymen, if he think fit, previous to the trial of a charge of *treaſon*, and 20 jurymen previous to trials for any other *felonies*, without aſſigning any reaſon againſt them, which is called *peremptory challenge*; and he may *challenge* as many more as he can produce *juſt* and *legal* exceptions againſt, which is called "*challenge with cauſe*." The total want of this juſt regulation laid the *magiſtrates* of the *Iſraelitiſh cities* more

open

open to the temptation of *bribery* than they would otherwiſe have been; and afterwards, under the monarchy, when theſe *heads of thouſands* were appointed by the king inſtead of the people, the want of *juries* became ſtill more apparent; for, if the proceſs againſt any man was directed by the king's letters, or under his ſeal, as in the caſe of *Naboth*, the judges were tempted to preſerve only the mere outward form of the law, without the ſpirit and intention of it: they would not *condemn*, indeed, without a *legal number of witneſſes* were ſet up to accuſe, but then there was no *jury* to determine whether or not theſe accuſers were *credible witneſſes*, which the law equally required at that time as it does at preſent. But, in every other reſpect, the government of the *Iſraelitiſh cities* ſeems (as I have ſaid) to have been ſimilar to what our *common law* requires. The Rev. Dr. *Sam. Croxall*, formerly

formerly archdeacon of *Salop*, has drawn up an account of the *Rulers of Cities* * in Iſrael,

* See his SCRIPTURE POLITICS, chap. 8. §. xv. concerning *the* RULERS *of* CITIES, p. 465, 466, 467, 468, 471, 472, 473, 475, 476, 477.

" The *third wheel* of their government, which, as " we mentioned before, *turned within the other two*, " was the conſtitution and magiſtracy *of every city* " *within itſelf*. As the weight of ſuperintending the " affairs of every *tribe* was much lightened to the " *prince* thereof, by the ſubordinate juriſdiction of the " *heads of families*; the political burden of theſe latter " was, in like manner, conſiderably alleviated by the " ſhare of authority which appertained to the *rulers of* " *cities:* Every tribe having ſeveral cities belonging to " it, and every city being inhabited by a great number " of families.

" The chief magiſtrate in theſe corporations was cal- " led the *ruler* of *the city*. * * * *

" Some have queſtioned whether there were not more " than one of theſe chief magiſtrates in every city: " That there *were many ſubordinate ones, having gradual* " *authority under one another, is very plain*; and that theſe " were the ſame whom *Moſes* conſtituted *to be judges of* " *the people in the wilderneſs*, by the advice of *Jethro* " his father-in-law. Exod. xviii. 25. *He choſe able men* " *out of all Iſrael*," (but I have already proved that the *able men* were really *elected* by the people,) " *and made* " *them heads over the people, rulers of thouſands, rulers* " *of hundreds, rulers of fifties, and rulers of tens.* And " *they judged the people at all ſeaſons: The hard cauſes*

they

Iſrael, ready to my hand, which is ſo ſuitable to my preſent purpoſe, that I ſhould

" *they brought unto* Moſes, *but every ſmall matter they* " *judged themſelves.*

" When, therefore, the tribes came to *have cities* " *belonging to them, where theſe magiſtrates preſided and* " *exerciſed their juriſdiction.* Which conſiſted princi- " pally of theſe three parts. *Firſt*, to *convene and hold* " *ſenates and councils*, in order to enact ſuch *by-laws as* " *were expedient for that body corporate of which they* " *were members.* Secondly, *to commiſſion and authoriſe* " *the judges to enter upon and to determine, in the judiciary* " *way, ſuch ſmall matters as lay properly within their cog-* " *nizance.* And, thirdly, *to make a part of the great* " *council of the nation, as often as it was ſummoned to aſ-* " *ſemble by that perſon who held the helm of government.*

" Theſe are they who are intended in that precept, " where it is ſaid, Deut. xvi. 18. *judges and officers* " *ſhalt thou make thee in all thy gates, which the Lord thy* " *God giveth thee throughout thy tribes.* Which *officers* " we find mentioned upon other occaſions. Deut. xxix. " 10. *Ye ſtand this day all of you before the Lord your* " *God; your captains of your tribes, your elders, and* " *your officers.* Again, *Moſes* ſays, Deut. xxxi. 28. " *Gather unto me all the elders of your tribes, and your offi-* " *cers.* And we find *Joſhua*, when he was *old and ſtricken* " *in age*, Joſhua xxiii. 2. *called for all* Iſrael, *and for* " *their elders, and for their heads, and for their judges,* " *and for their officers.*

" So, when *David* calls together the *great congrega-* " *tion*, to declare his purpoſe about the building of the

" temple,

do injuſtice to the ſubject, if I neglected to give my readers ſome extracts of it in the author's own words.

The

" temple, 1 Chron. xxviii. 1. we read of *the captains over* " *the thouſands, and the captains over the hundreds, with* " *the officers*, being ſummoned upon that occaſion. And, " afterwards, we are told that *Solomon* made a ſpeech " *unto all* Iſrael, 2 Chron. i. 2. *to the captains of thou-* " *ſands, and of hundreds, and to the judges, and to every* " *governor in all* Iſrael, *the chief of the fathers.* And " thus, when that pious prince *Hezekiah* was reſolved " upon a reformation both of religion and manners, " throughout his kingdom, it is ſaid, 2 Chron. xxix. 20. " *Then* Hezekiah *the king roſe early, and gathered the ru-* " *lers of the city, and went up to the houſe of the Lord.*

" As to their judiciary capacity, they were not, ſtrict- " ly ſpeaking, judges themſelves, but had the power " of admitting what cauſes they thought were proper " to come before the judges, and of rejecting what they " looked upon as frivolous or unneceſſary to be enqui- " red into. * * * * * *

" Of the judiciary authority of theſe rulers, we read " farther in the caſe of *Jeremiah*. When (another) " *Micaiah* had heard his prophetical denunciations " againſt *Iſrael* and *Judah*, Jer. xxxvi. 11. he went down " *into the king's houſe, into the ſcribe's chamber, where* " *all the princes* (theſe rulers) *were ſitting*, and inform- " ed them of it. And after, when *Jeremiah* was going " out of the city into the land of Benjamin, *Irijah*, " who ſuſpected that he was going to deſert to the army " of the *Chaldeans*, who were lately broken up from " beſieging

The *military* duties of *watch* and *guard* in cities, towns, &c. which, by the laws

" beſieging the city, Jer. xxxvii. 12. *took* Jeremiah *and*
" *brought him to the princes. Wherefore the princes were*
" *wroth with* Jeremiah, *and ſmote him, and put him in*
" *priſon.*

" And, upon his farther propheſying, that *the city*
" *ſhould be given into the hand of the king of* Babylon,
" *Therefore the princes ſaid unto the king, We beſeech thee,*
" *let this man be put to death. Then* Zedekiah, *the king,*
" *ſaid, Behold he is in your hand; for the king is not he that*
" *can do any thing againſt you.* Which ſhews that they
" bore a mighty ſway in the *great council* of the nation;
" and that, when they prayed judgement and execution
" againſt any one, even the king thought it moſt ſafe
" and prudent to comply with them.

" The number of theſe *rulers*, in every city, was in
" proportion to the number of its inhabitants: as many
" *thouſands* as it contained, ſo many *rulers*, of that rank
" and denomination, belonged to it; from which re-
" gulation, the eſtimation and conſequence of each
" city was diſcernible at one view. And from this
" conſideration ariſes that fine alluſion of one of the
" prophets concerning the place where Chriſt ſhould
" be born; ſo underſtood and applied by *the chief prieſts*
" and *ſcribes* themſelves, as the Evangeliſt informs us.
" Mat. ii. 5. Mic. v. 2. *But thou,* Bethlehem Ephratah,
" *though thou be little among the thouſands of* Judah, (in
" compariſon of thoſe cities that have *rulers of thouſands*
" belonging to them,) *yet out of thee he ſhall come forth*
" *unto me that is to be ruler in* Iſrael; *whoſe goings forth*

" *have*

of K. William I. were ordered to be performed "*in gyrum*," i. e. in due *rotation* of

" *have been of old from everlaſting.* So exactly was " almoſt every minute circumſtance, relating to the Sa- " viour of mankind, delineated and foretold by thoſe " divinely inſpired writers, who lived ſo many hun- " dred years before he came into the world. * *

" Captains of Thouſands, &c.

" The reſt of the officers that governed the army we " find called by the titles of *captains of thouſands, cap-* " *tains of hundreds, captains of fifties, and captains of tens.* " Who probably were of the ſame rank with thoſe " whom *Moſes* conſtituted, in the wilderneſs, *rulers of* " *thouſands*, &c. and, at firſt, acted in a double capa- " city, being at the ſame time civil magiſtrates and " military officers.

" The *captains of thouſands* ſeem to have been much " the ſame as colonels of regiments with us; and the " *captains of hundreds* might probably anſwer to thoſe, " who, in our army, have the command of troops and " companies; the *captains of fifties* and *tens*, to our " ſubalterns, ſerjeants and corporals.

" Among the liſt of *David*'s adherents while he fled " from *Saul*, 1 Chron. xii. 1. 14. and *kept himſelf cloſe* " *at* Ziklag, after ſeveral names mentioned, it is ſaid: " *Theſe were of the ſons of Gad, captains of the hoſt: one* " *of the leaſt was over an hundred, and the greateſt over* " *a thouſand.* Again, we read of others, ſaid, 1 Chron. " xii, 20. to be *captains of the thouſands that were of* " Manaſſeh. And, when *David* had thoughts of bring- " ing the *Ark of God* from *Kirjathjearim*, we are told,

" 1 Chron.

of ſervice by all the inhabitants, as I have already ſhewn, were farther regulated by the

" 1 Chron. xiii. 1. he *conſulted with the captains of thou-*
" *ſands, and hundreds, and with every leader.* And
" again, when he declared his intentions about build-
" ing the temple, it is ſaid that he, 1 Chron. xxviii. 1.
" *aſſembled all the princes of* Iſrael, *the princes of the tribes,*
" *and the captains of the companies that miniſtered to the*
" *king by courſe, and the captains over the thouſands, and*
" *the captains over the hundreds.*

" So, when *Jehoiada*, the high-prieſt, had a mind to
" bring on the reſtoration, by declaring *Joaſh* to be
" king, 2 Kings xi. 4. *he ſent for the rulers over hundreds,*
" *with the captains, and the guard, and ſhewed them the*
" *king's ſon*; and gave them proper inſtructions what
" they were to do. *And the captains over the hundreds*
" *did according to all things that* Jehoiada *the prieſt com-*
" *manded. And to the captains over hundreds did the*
" *prieſt give King* David's *ſpears and ſhields, that were*
" *in the temple of the Lord. And he took the rulers over*
" *hundreds, and the captains, and the guard, and all the*
" *people of the land, and they brought down the king from*
" *the houſe of the Lord, and he ſate on the throne of the kings.*
" And we read, 2 Kings i. 9, 11, 13. of *three captains*
" *of fifties*, who, with their fifties, were ſent ſucceſſively
" by *Ahaziah*, king of *Iſrael*, to bring the prophet
" *Elijah* to him. The Apocryphal writings tell us,
" 1 Mac. iii. 55. that *Judas ordained captains over the*
" *people, even captains over thouſands, and over hundreds,*
" *and over fifties, and over tens.*

" Theſe

the ſtatute of Wincheſter, in the 13th K. Edw. I. A. D. 1285. which, without altering the former law about *rotation*, ſpecifies the *ſtrength of the guard* to be ſet in each place, and ordains (for I will cite it as abbreviated by Mr. Lambard, in his "*Duties of Conſtables*," p. 13. which proves that he thought it ſtill in force ſo late as the reign of Q. Elizabeth in 1584.) that "NIGHT-WATCHES *ſhould be kept* "*yearly, from the feaſt of the* ASCENTION "*untill*

"These officers, from the *captain of the hoſt* down to "the loweſt ſubaltern, appear, after the monarchy "took place, to have received their commiſſions from "the king." (Whereas they were before choſen by the people.) "When *Samuel* declares to the people the "*manner* of the king that was to reign over them, this "is part of it: 1 Sam. viii. 12. *he will appoint him cap-* "*tains over thouſands, and captains over fifties*, &c. Ac- "cordingly, when *Saul* began to grow jealous of *David*'s "riſing glory, 1 Sam. xviii. 13. *he removed him from* "*him, and made him his captain over a thouſand*. So we "read, 2 Sam. xviii. 1. that *David numbered the people* "*that were with him, and ſet captains of thouſands, and* "*captains of hundreds, over them.* 2 Chron. xxv. 5. and "that *Amaziah gathered* Judah *together, and made them* "*captains over thouſands, and captains over hundreds.*"

" *untill* MICHAELMAS, by ſix men at
" everie gate of everie CITIE, *by* 12 *men*
" *in everie* BOROUGH *towne, and in every*
" *other* TOWNE *by ſix men, or four men,*
" *or according to the number of inhabitants*
" *in the towne, all the night long, from*
" *ſunne ſetting to ſunne riſing; ſo that, if*
" *any ſtranger did paſſe, he ſhould be ar-*
" *reſted till the morning, and then ſet at*
" *large, (if no ſuſpicion were found of him,)*
" *but, if any ſuſpicion fel out againſt him,*
" *then he ſhould be impriſoned till he might*
" *be lawfully delivered. And of theſe*
" WATCHES" (ſays Mr. Lambard) " *the*
" *officers before named have the charge,*
" *within the limites (or places) of their*
" *auctorities, as the* CONSTABLE *in his*
" *town, the* BORSHOLDER *in his boroe,*
" *and the* HIGH CONSTABLE *within all*
" *his* HUNDRED: *and theſe* officers ought
" to ſee *theſe* WATCHES" (ſays Mr. Lam-
bard, by which he plainly inſiſts on the

con-

ſinued force of this ſtatute, ſo that the enquiry concerning WATCH-DUTY, at views of Frankpledge, ought to be regulated by it) " *duly ſet and kept, and ought* " *alſo to cauſe* HUE *and* CRIE * *to be* " *rayſed after ſuch as will not obey the* " ARREST *of ſuch watchmen.*" This power of ARRESTING ſuſpicious perſons, in all towns and boroughs, ſhews the neceſſity

* The *hue* and *crie* was a *military* exertion of the *civil* power, which all men were obliged to attend, with their *arms*, in *military array*, whenever legally ſummoned to do ſo. Even ſo late as the 3d *Hen.* VII. 1. as Mr. *Dalton*, in his *Officium Vicecomitum*, relates, " *the ſheriff's bayliff*, " *to execute a* REPLEVY, took with him 300 men armed " (MODO GUERRINO) ſc. with brigandines, jackes, and " guns, and *it was holden lawful*," (ſays he,) " for the " ſheriff's officer hath power to take aſſiſtance, as well as " the ſheriff himſelf :" p. 355. And a little farther he adds, (p. 356) " and every man is ſworn (ſaith Keble) " to be aiding to the ſheriff in his buſineſs; and, if they " do it not at the requeſt of the ſheriff, they ſhall be " fined : 3 *Hen.* VII. 1. Br. Fine pur contempt, 37. " and treſpaſs, 266. See alſo Stat. of 2 *Hen.* V. cap. 8. " which inflicteth both fine and impriſonment upon ſuch " as ſhall not aid the ſheriff, they being thereunto re- " quired." This proves that the *military* capacity of every man is required to ſupport the *civil* government.

ceſſity of having in each town and borough a proper JAIL, or *appointed place of confinement*; eſpecially as the common law required, "*that if any man was of "ſo evil credit, that he could not get him-"ſelfe to be received into one of theſe* TY-"THINGS *or* BOROES, *that then hee ſhould "be ſhut up in* PRISON, *as a man un-"worthie to live at liberty amongſt men "abroad.*" (Lambard's Duties of Conſtables, p.8.) And the expences, neceſſary for the building and maintaining ſuch proper *places of confinement*, might be levied by the COURT-LEET on the inhabitants of each diſtrict; for the LEET has competent power, according to the common law, to *levy taxes* for defraying all neceſſary public works*: ſo that the

* See Powell's Treatiſe of the Antiquity, &c. of Courts of Leet, or View of Frank-pledge. &c. p. 163. "*Any "*BY-LAWES *for the commonweale may be made in a* LEET, "*and are good*, and *will lye againſt thoſe that do not con-"ſent, as to make cauſeyes, highways, bridges, and ſuch "like,*

modern uſage of applying to the great *national council* on ſuch occaſions is clearly

" *like**," 44th Edward III. fol. 19. " *But a by-*
" *law to repair a church binds none but ſuch as do aſ-*
" *ſent*, vid. Co. 5. fol. 63. A LEET *may make* BY-LAWES,
" *the lord by preſcription may diſtreyne for the amerciaments,*
" *and ſell the diſtreſſe: For the king may ſo doe, and the*
" LEET *is the king's, although the lord* hath the profits.
" BROOKE LEET, 34. PRESCRIPTION 40." The ſame power, that is here attributed to *the lord of a leet*, certainly belongs alſo to *ſheriffs*, *mayors*, *bailiffs*, and *hundreders*, or *high conſtables*, who may hold *leets* by the common law, and conſequently have a right alſo, " *by preſcrip-*
" *tion, to diſtreyne for the amerciaments, and to ſell the diſ-*
" *treſſe.*" I muſt alſo obſerve that where any lord of a manor hath enjoyed a right of holding a court *leet*, and hath either abuſed or neglected his power, the *king* may certainly, according to the true limited doctrine of " *Nullum Tempus*," (ſee my ſeparate Tract on that head,) reſume the *right* of the court and all the *profit* of it, (which is, properly, *res fiſcalis*,) and muſt, in that caſe, reſtore the power of the holding the ſaid court to the *high conſtable*, or proper officer, by the *common law*.

* And no public works ſurely are more for the *common weal*, or more neceſſary for enforcing a due compliance with the *common law*, than the erection of proper *jails* and *places of confinement*, or *houſes of correction*, and " *of induſtry*," in leſſer diſtricts, to prevent the *accumulation of multitudes of priſoners* in the county jails, where they mutually *corrupt each other*, and to prevent the baneful practice of *ſelling convicts into foreign ſlavery*, or into miſerable torture in floating priſons, who, according to the common law, ought to be puniſhed *only* upon the ſpot where their offences, as well as their contrition and amendment,

ly *wrong*; becauſe, it not only occaſions a *needleſs* expence, interferes with more important buſineſs of the nation, and grievouſly prolongs the ſittings of parliament, but alſo tends to enure the members to *private ſolicitations* in behalf of *partial* objects; facilitates the *practice* of *canvaſſing* them *individually*; and thereby lays them open to *influence* and *temptation* in higher matters; whereas *frequent* but SHORT SESSIONS of *newly-elected parliaments*, like thoſe of ancient times, would effectually *cut up the roots of corruption and undue influence*.

In order the more effectually to promote the happy ſyſtem of government,

ment, might be known; for, if there ſhould be ſtill cauſe to ſuſpect a want of improvement in any of them, ſo that they ſhould not be able to obtain a re-admiſſion into any *tithing* of *Frankpledge*, the LEETS had ample authority to prolong their impriſonment, and to keep them hard at work, to defray the expences of a *ſober* and *limited* diet, the very beſt mode of inclining reprobates to hear *reaſon* and *inſtruction*. The indefatigable labours of the benevolent and *truly patriotic* Mr. HOWARD (who has ſo diſintereſtedly devoted both himſelf and his fortune to the *public ſervice*) afford ample materials for ſelecting the moſt juſt and effectual means of forming ſuch neceſſary eſtabliſhments.

which I now recommend, viz. that "ALL "*freeborne men*" (within this kingdom) "*ſhoulde caſt themſelves into* TITHINGS," (ſee p. 16 and 17.) for the common ſecurity of ALL, it was ordained by king William I. "*Ut* OMNES *habeant et teneant* "LEGEM REGIS EDWARDI *in omnibus* "*rebus adauctis his quæ conſtituimus*" (ſays the ſtatute of William) "*ad utilitatem* "*Anglorum.*" "*That* ALL PERSONS "*ſhould have and hold* THE LAW *of king* "*Edward*" (wherein the more ancient laws for maintaining the *tithings* and *hundreds* are collected and ſtated) "*in all* "*things, thoſe things being alſo added* "*which we have ordained*" (ſaid K. Wm) "*for the uſe of the Engliſh.*" And no free nation could reaſonably deſire more ſubſtantial and effectual *additions* for the ſecurity of their *own peace* and *liberty* than thoſe *additional* laws of K. William, moſt

of

of which I have already cited *. To theſe I muſt now add a farther excellent clauſe of K. William's ſtatute †, which is neceſſary

* "That all cities, boroughs, caſtles, hundreds, and "wapentaches, of our whole kingdom, ſhall be *watched* "and *guarded* IN GIRUM" (in *rotation* or by a *roſter* of ſervice) "againſt malefactors and enemies, according "as the ſheriffs, aldermen, mayors," (PRÆPOSITI, a title as frequently given to the *hundreders*, or *high-conſtables*,) "*and*" (others) "*our miniſters, ſhall better provide* "*by* COMMON COUNCIL" (i. e. by parliament) "*for the* "*good of the kingdom*," that ALL "earls, barons, "knights, and ſerjeants, (ſervientes,) *and all freemen of* "*our whole kingdom* aforeſaid, (univerſi liberi homines "totius regni noſtri prædicti,) ſhall have and hold themſelves always well in ARMS *and in horſes*, ut decet et "oportet, (ſuitably to their rank,) and that they may "be always ready and prepared to fulfil our ENTIRE "SERVICE whenever there ſhall be occaſion, and as "they ought *of right* (de jure) *to do for their lands and* "*tenements, and as we ſhall appoint them by* COMMON "COUNCIL OF THE WHOLE KINGDOM." (So that the *Engliſh* were ſo far from being enſlaved by what is commonly called the *conqueſt*, that K. Wm's ſtatute expreſsly ſubmits the efficient power of the kingdom, the *national militia*, to the orders of parliament). And alſo the clauſe which I have but juſt now cited for the regulation of WATCH and WARD.

† "Omnis homo qui voluerit ſe teneri pro LIBERO, "ſit in PLEGIO," (i. e. fidejuſſione,) "ut PLEGIUS eum "habeat

ceſſary for the better enforcing and promoting K. Edward's laws, viz. that "*every* "*man who ſhall be willing* TO BE DEEM-"ED A FREEMAN *ſhall be* IN PLEDGE," (ſhall enter himſelf into ſome tithing of FRANKPLEDGE,) "*that the pledge may* "*have him to juſtice, if in any thing he ſhould offend; and if any of ſuch*" (pledged perſons) "*ſhould abſcond, that the* "*pledges may pay whatſoever damages are* "*laid,*" (or rather are proved,) "*and* "*may clear themſelves, that they knew*" (or were privy to) "*no fraud in the ab-*"*ſconded perſon. Let the* HUNDRED" (court) "*be demanded*" (or ſummoned) "*and*

"habeat ad juſtitiam ſi quid offenderit; et ſi quiſquam "evaſerit talium, videant plegii ut ſolvant quod calum-"niatum eſt, et purgent ſe, quia in evaſo nullam frau-"dem noverint. Requiratur HUNDREDUS, et COMI-"TATUS ſicut anteceſſores ſtatuerunt, et qui juſtè ve-"nire debent et noluerint, ſummoneantur *ſemel*, et, ſi "*ſecundo* non venerint, accipiatur BOS UNUS, at ſi *tertio*, "alius BOS, et ſi quarto, reddatur de rebus hujus ho-"minis quod calumniatum eſt, quod dicitur *ceapgyld*, "(al. *orfgyld*, quod idem eſt,) et inſuper regi forisfaci-"tura."

" *and the* COUNTY" (court) " *and thoſe* " *who ought of right to attend*" (at *either* of theſe courts, as the context requires us to underſtand) " *and ſhall be unwilling,* " *let them be ſummoned* ONCE; and, if to a " SECOND" (ſummons) " *they ſhall not* " *come, let* ONE OX *be taken,*" (or perhaps the medium value of one ox, at the current market-price, for thus the quantum of the *forfeit* would generally bear a due proportion, or nearly ſo, to the true value of money; as college-rents are ſometimes aſcertained by the value of certain quantities of corn,) " *and, if to a* " THIRD" (ſummons he ſhall not come, let) " *another ox*" (be taken;) " *and, if to* " *a* FOURTH" (ſummons they ſhall not come,) " *let what is rated be paid* " *out of the effects of this man, which is* " *called* CEAPGYLD*, *or* ORF-GYLD.

* CEAPGYLD. CEAP in the Saxon tongue ſignifies *price, wages, cattle, wealth,* or *chattles*; and GYLD ſignifies

GYLD *. Regular ſummonſes, however, were required by *law*, to be made *ſeven days before* any of theſe courts, unleſs a legal and admiſſible excuſe could be aſſigned for the omiſſion, ("*et ſeptem diebus* "*antea* SUMMONIRI, *niſi publicum commodum vel dominica regis neceſſitas terminum præveniat*," ſee K. Edward's law de Heretochiis, &c.) And a neglect or diſregard of a *legal ſummons to a court of law* might ſurely be deemed a *contempt of the law*, the declared penalties for which (a ſingle or double forfeiture of the man's WERE †) may perhaps help to explain the

ſignifies *payment*; the compound word CEAPGYLD, according to Mr. Somner, ſignifies "*rei furto ablatæ pretium*," "*the price of any thing ſtolen*," but which, in this law, muſt evidently mean the *payment*, or *forfeit, of the man's reputed wealth*; and * ſo likewiſe ORFGYLD. ORFE ſignifies *money, cattle, effects*; and the compound word Mr. Somner renders "*rei pretium*," "*the price of any thing*." So that I ſuppoſe both theſe words to be ſynonymous with the Saxon word † *Were*; which is commonly rendered "*Æſtimatio capitis*;" not the whole value of a man's *eſtimated wealth*, but only ſuch a *certain rate* according

the nature of the *amerciaments* mentioned above for neglect of *ſummonſes*. "*Et* "*qui leges apoſtabit*, (i.e. violarit,) *ſi fuerit*

"*An-*

according to each man's rank in life, as he might juſtly be ſuppoſed *able to pay* (in caſe he ſhould incur a penalty or forfeit) without being *ruined* and degraded by it, agreeable to what I have remarked in p. 86 and 87, on the due *limitation of amerciaments*, by the 14th chapter of Magna Charta; which was certainly the law of the kingdom long before that time. Becauſe, even in K. Edward's laws, it appears, that a man might be amerced *twice his Were*, "*bis Weram ſuam*," for a ſecond offence, and *all that he was worth* for a *third* offence; ſo that a man's *Were*, or eſtimated price, was certainly very far within the compaſs of his real wealth or ſubſtance. And, therefore, all theſe *amerciaments* muſt neceſſarily be underſtood to have been levied ſtrictly according to the *ſpirit* of what was afterwards ordained in Magna Charta, i.e. *ſaving to a man* (according to his rank) his CONTENEMENT, or MERCHANDISE, or *wainage*, without degrading him from his rank and means of livelihood, except the ſame crime was obſtinately repeated: and ſuch "*amerciaments were to be made only by the oath* "*of honeſt and lawful men of the vicinage*," according to the regular uſage of all the ancient *leets* and popular courts. The great object of *amerciaments* was to compel *men of all ranks* to reſpect and obſerve the laws; whence aroſe the neceſſity of varying the quantum of the *mulct* in due proportion to the offender's *ability to pay*, without actually depreſſing or degrading him from his rank; and of this *due proportion* a jury of the vicinage were the only proper judges.

" *Anglicus, vel Dacus, vel Waliſcus, vel*
" *Albanicus, vel inſulicola,* WERÆ *ſuæ*
" *reus ſit apud regem; et, ſi* SECUNDO *id*
" *faciat, reddat* BIS WERAM SUAM; *et,*
" *ſi quid addat* TERTIO, *reus ſit omnium*
" *quæ habebit* *."

To increaſe *amerciaments* on the repetition of *offences* ſeems to be both juſt and neceſſary; but, whether in ſo enlarged a proportion as that of *doubling the Were* for a ſecond conviction, and forfeiting *all* on a third, may reaſonably be queſtioned; eſpecially as there is no expreſs exception for ſecond and third offences in the *limitation of amerciaments* ordained by the 14th chapter of *magna charta*. Nevertheleſs, if we conſider that a frequent *repetition* of the *ſame miſdemeanor* is undoubtedly a *heinous*

* " *And whoſoever ſhall neglect* (or violate) *the laws,*
" *whether he be Engliſhman, Dane, Welchman, or Scot,*
" *or iſlander, ſhall forfeit his* WERE *with the king; and,*
" *if he ſhall do it a* SECOND TIME, *let him pay* TWICE
" HIS WERE; *and, if he ſhall add a* THIRD TIME,"
(i. e. a third repetition of the ſame offence,) " *let him*
" *forfeit all that he ſhall have.*"

heinous aggravation of it, and that it was always ſo conſidered *in the common law*, and puniſhed accordingly by an *aggravation of the mulct*, as appears by the *laws* already cited, we ſhall, perhaps, be inclined to believe, that the authors of the ſaid *limitation of mulcts* in Magna Charta, though they certainly intended to regulate by it the pecuniary penalties of *crimes in general*, yet, (for any thing that appears,) that had not in contemplation the peculiar circumſtance of a *contemptuous repetition* of any crime, and may therefore be juſtly ſuppoſed not to have intended to abridge the ſalutary ſpirit of the *common law*, ſo neceſſary for its own preſervation, in duly puniſhing, by gradual advances of ſeverity, any *repeated contempts* of its authority.

If all theſe points be duly conſidered, it muſt appear that our *common law* is already veſted with *ample powers* to enforce a *revival* of the ancient conſtitution of this

kingdom; ſo that nothing is wanting but a general communication of its principles (the purpoſe of this tract) to engage THE WILL OF THE PUBLIC for its re-aſſumption; that the "SUMMA ET MAXIMA SECU-"RITAS" of our anceſtors (ſee p. 6.) may be once more eſtabliſhed, the happy effects of which cannot be expreſſed in ſtronger terms than in the words of Sir Edw. Coke on this very ſubject. "*By* "*the due execution of this law,*" (ſays he, ſpeaking of the VIEW *of* FRANKPLEDGE, in his comment on Magna Charta, p. 73. 2d inſt.) "*ſuch peace (whereof this chap-*"*ter ſpeaketh) was univerſally holden* "*within this realme, as no injuries, homi-*"*cides, robberies, thefts, riots, tumults,* "*or other offences, were committed; ſo as* "*a man with a white wand might ſafely* "*have ridden, before the conqueſt, with* "*much money about him, without any wea-*"*pon, throughout England; and one ſaith* "*truly,*

"truly, ‡ *conjectura eſt, eaque non levis, haud*
"*ita multis ſcatuiſſe priſca tempora ſceleribus,*
"*quippe quibus rapinæ, furto, cædi *, plu-*
" *rimiſque*

‡ Referring to Mr. Lambard's explanation of ÆSTIMATIO CAPITIS.

* Cædi, or *manſlaughters*, (if he meant *voluntary* ſlaughters or *murders*,) ought not to have been mentioned here as crimes formerly puniſhed only by *pecuniary mulcts*; for, though I am well aware that many eminent law-writers have *ſuppoſed* this, as well as the learned Mr. Lambard and the excellent lawyer who quoted him, and though, perhaps, too many inſtances may be cited of ſuch a corrupt uſage ſometimes prevailing in ancient times, ſo as to ſtrengthen the *ſuppoſition*, yet it never was *the law* ſince the eſtabliſhment of chriſtianity, but a real *perverſion* of the law, whenever it was done; which muſt have been occaſioned either by corrupt *partiality*, or *favour*, from the officers of the crown, or through their *ignorance*, and want of due *diſcrimination* to be aware of the particular circumſtances of *manſlaughters*, wherein fines, or *mulcts*, might ſometimes legally take place, as in *involuntary manſlaughters*, to make men more careful of each others lives, and even in caſes of *accidental deaths*, wherein the *deodands* were in the nature of *mulcts*, and alſo the particular circumſtances when *mulcts* might be levied for *actual murder*; which was only when the murderer "*had*
"*fled and could not be taken, that a certain ſum ſhould be*
"*paid for him, and ſhould be collected, becauſe they had not*
"*taken the killer*, &c.†" But, if he could be taken, the ſame

† "Si autem aufugeret," (i. e. interfector,) "et capi non poſſet,
"ſolverentur pro eo 66 marcæ, et colligebantur in *villa* ubi quis eſſet
"*interfectus*,

" *rimiſque aliis ſceleribus mulctæ impone-*
" *bantur*

ſame law declared " *fieret de eo juſtitia,*" let juſtice be done upon him; and the only *juſtice*, in the laws of God and *man*, for ſuch a crime was, and is, the *retribution of death!* The learned judge Bracton copied, from K. Edward's laws, this very expreſſion, concerning a convicted murderer, " *fieret de eo juſtitia,*" as alſo the alternative when the murderer could not be taken, " *ſi autem* " *aufugeret*, SOLVERETUR *ut ſupra dictum eſt,*" (ſee leges Edouardi regis, c. 16.) The doctrine here referred to, by the words " *ut ſupra dictum eſt,*" is in the preceding chapter of king Edward's laws, viz. N°. 15. entitled, *Lex Murdrorum*, to the following effect; † that if a murdered

" *interfectus*, et ideo quia *interfectorem* non habuerunt; et, ſi in tali *villa* " pro paupertate colligi non poſſent, colligerentur in *hundredo* in the- " ſauro regis *deponendæ.*" (Bract. lib. 3. c. 15.) N.B. The fines were to be *depoſited* in the exchequer (*deponendæ*, and not appropriated) for a year and a day, leſt the *murderers* ſhould, in the mean time, be taken; in which caſe the fines were to be returned to the town or *hundred*, as will hereafter be ſhewn.

†"Si quiſpiam *murdratus* alicubi reperiebatur, querebatur apud villam " ubi inveniebatur interfector illius. Qui, ſi inveniri poterat, *trade-* " *batur juſtitiæ regis* infra ipſos 8 dies interfectionis. Si vero *inveniri* " *non poterat*, menſis et unius diei reſpectum habebant ad eum perqui- " rendum. Quod ſi intra terminum non inveniebatur, colligebantur " in villa illa 46 Marcæ. Quod ſi ad tantæ ſolutionem pecuniæ non " ſufficiebat, *per hundredum colligebatur*, quod in *villa* non poterat. " Veruntamen quoniam omnino *villa* confundebatur, providerunt " barones quod *per hundredum* colligerentur, et ſigillo alicujus Baronis " comitatus ſigillarentur, et ad Theſaurarium Regis deportarentur, " quas ſigillatus" (perhaps for *ſigillatas*) " ipſe ſervaret per annum " et diem unum, quod ſi infra hunc terminum poſſit murdrator haberi, " *traderetur juſtitiæ regis, et ipſi marcas Theſaurario Regis commendatas* " *rebaberent.*" (So that the fine appears manifeſtly to be intended for no other purpoſe than to induce the inhabitants to *bring the murderer to juſtice.*) " Si infra tempus annuum non poſſet teneri, parentes murdrati " ſex marcas haberent, rex quadraginta: &c. &c."

" *bantur pecuniariæ, cum hiis hac noſtra*
" *tempeſtate,*"

dered perſon was any where found, enquiry was made after the murderer, who, if he could be found within eight days, he was to be *delivered to the juſtice of the king*. But, if he could not be found, the inhabitants had a reſpite *(reſpectus)* of a month and a day, to ſearch for him. Within which term if he was not found, the 46 marks before-mentioned were to be collected in the town, or (if ſo large a ſum could not there be raiſed) throughout *the hundred*; and to be delivered, ſealed up to the king's treaſurer, who was to keep them, ſealed up, for a year and a day, that if, within this term, the murderer could be taken, he ſhould be DELIVERED TO THE JUSTICE OF THE KING, and the marks were to be *returned*. So that *juſtice*, and not the fine, was manifeſtly the object; for, otherwiſe, ſome farther proviſion would have been made, that the fine ſhould *not be returned* to the innocent inhabitants, until the abilities of the guilty perſon to make it good were aſcertained. And, beſides, *the juſtice of the king* could not *legally* be deferred, becauſe the law ordained that "*juſtice ſhould be done*" upon the murderer, "*fieret de eo juſtitia,*" and there could be no other *juſtice* to expiate the crime of murder except *the blood* of the criminal, *after the laws of God* were acknowledged by our Anglo-Saxon anceſtors; ſo that the king could not remit the due puniſhment either *for a fine*, or *through favour*, without drawing upon *his own head* a ſhare of the *guilt of blood!* And, as a proof of this, the crime of *wilful killing*, or *murder*, was, in the laws of K. Canute, deemed BOTELESS, *that is*, UNEXPIABLE, which is amply demonſtrated by the learned Mr. juſtice Aland, in the preface to his edit. of Forteſcue's Treatiſe on "*the difference between an abſolute and* "*limited Monarchy,*" p. 59 to 64. See alſo my Tract "on *Crown Law*, &c."

" *tempeſtate*," (as, for inſtance, 15 men hanged up together upon one gallows at Newgate the very laſt execution-day!!!)

" *nos omnibus merito capitis pœnam ir-*
" *rogamus*, &c." 2d Inſt. p. 73.

" Mos retinendus eſt fideliſſimæ vetuſ-
" tatis." 4 co. 78.

Old Jewry,
July 17, 1784.

GRANVILLE SHARP.

Δοξα εν ὑψιστοις ΘΕΩ,
Και επι γης ΕΙΡΗΝΗ,
Εν ανθρωποις ΕΥΔΟΚΙΑ.

Glory in the higheſt to GOD,
And on Earth PEACE,
Towards Men GOODWILL!

TRACT, Number II.

An ABSTRACT from the preceding Account of the *Hundreds* and *Tithings*, preſented by the author to the committee of delegates from the ſeveral counties, &c. and entitled

"A PROPOSAL

"For removing the enormous diſproportion "of popular repreſentation, enjoyed by "the corrupt and venal boroughs: which "Boroughs are now veſted or monopoli-"zed, in the hands of a few individuals, "as *private property*; a property avowedly "eſtimated by the value of *the ſeats in par-*"*liament*, (inſtead of the only lawful pro-"perty therein, *the real rentals of tene-*"*ments*,) and, at that unlawful and ex-"orbitant eſtimation, notoriouſly *bought* "*and ſold*, to the diſgrace and perverſion "of parliamentary authority."

THE preſent great national evil, the notorious *miſrepreſentation* of the commons in parliament, cannot *ſafely* be remedied, or altered for the purpoſe of amendment, by any other mode than that of reverting to the firſt principles of the conſtitution, and by reviving the *ancient rights* of all denominations or claſſes of the people; at the ſame time carefully rejecting every *innovation* that is not *conſiſtent in principle* with the *ancient uſages* of the realm, of which the *certain effects* are already known: whereas no human prudence can inſure the *real* tendency and final effect of *an innovation* in matters of ſtate, howſoever plauſible it may at firſt appear.

Though all true friends to the cauſe of liberty and the *natural rights* of mankind would wiſh that *every man* ſhould vote for his repreſentative in the national council, without any other deſcription of *right*, or qualification, than that of *being a man*; yet, if this has not already been *the uſage* of the realm, it is not, perhaps, *adviſeable*, at leaſt at preſent, to be adopted. — We know not what would be the effects of it; probably *they would be good:* but we ought to walk in a trodden path, and build on ſure foundations.

That *every man*, as ſuch, if he was but an inhabitant of *a county*, did formerly vote, in *the court* of that county, (called the *plein county*, or *full county*,) at elections for *the knights* of the ſhire, ſeems probable, by the deſcription of "very great "*outrageous* and *exceſſive number of peo-* "*ple dwelling within the ſame counties*, "*&c.*

"*&c. voting at ſuch elections,*" as mentioned in the act of 8 Hen. VI. cap. 14. which reſtrained the right of voting for knights to the freeholders of 40s. per ann. lands or tenements.

But a juſt definition of *terms* will beſt ſhew what deſcription of perſons have an unqueſtionable *right to vote for repreſentatives* according to the fundamental principles of the conſtitution.

The titles of *freeholder* and *liber-tenens* are *ambiguous* terms, not ſufficiently deſcriptive of the rank intended to be expreſſed; for they are applied at preſent only to *land-owners*; that is, to thoſe who have, at leaſt, a *life-intereſt* in *lands* or houſes; which laſt, as being built on *land*, do equally intitle the proprietor to the rank of a *land-owner:* but theſe ambiguous terms, *freeholders* and *liberi tenentes*, have ſometimes been applied alſo to the *free renters of tenements by the year*,

in

in contradiſtinction to the *tenants at will* and *holders in villenage*; for, the old Saxon *freo-borges*, or *free-burgeſſes*, (that is, the *free-pledges* of the realm,) were equally *free* in their condition with thoſe perſons we now call *freeholders*, though the *tenure* of many of them was *not permanent*; they being (by far the greateſt part of them) only the *renters of tenements by the year*; though, indeed, the *land-owners* themſelves (thoſe that were *houſekeepers*, or *houſeholders*) muſt have been included under the ſame general deſcription of *freoborges*.

Sir Edward Coke defines the meaning of the word *burgh* to be "*becauſe* it *ſendeth burgeſſes to parliament*;" and, though this is not the proper derivation of the word, it is certainly the *ancient uſage* of all *boroughs*, as well as the *right* of all *burgeſſes*, or *freoborges*. For *burgs* were originally named from burgeſſes,

or

or *freo-borges*, i. e. *free-pledges*,* in their collective capacity, in *tithings* and *hundreds*, (many of which might be included in one *borough*,) and not vice verſa, the *burgeſſes* from the *burghs*, which at preſent is commonly underſtood; and may, indeed, in ſome caſes of the more modern boroughs, incorporated by charters, be really the fact†.

In the great annual courts of *Frank-pledge* throughout the kingdom, *every houſeholder* was incorporated with nine other neighbouring *houſeholders* (archbiſhops,

* "*It was in former times*" (ſays Sir Edward Coke, ſpeaking of the word BURGH) "*taken for thoſe compa-*
"*nies of ten families which were one another's pledge, and*
"*therefore a pledge, in the Saxon tongue a* BORHOE,
"*whereof (ſome take it) that a* BURGH *came; where-*
"*of alſo cometh* HEADBOROUGH, or BOROWHEAD, *ca-*
"*pitalis plegius, a* CHIEF PLEDGE, *viz. the chief man*
"*of the* BORHOE," &c. Co. Lit. p. 109.

† A different etymology may alſo be aſſigned to many towns, the names of which end with *berg*, or *burg*, which ſignifies a *fortification*, or caſtle, from the Greek πυργος, of which the learned Sheringham has given ſome inſtances in his tract de Anglorum Gentis Origine, p. 278.

biſhops, biſhops, peers, and other great men, excepted, who *pledged* their own *houſeholds*, and were ſuppoſed in law to have a *tithing* within their own families; but all other *houſeholders*, or *renters of houſes*, *per annum*, were incorporated) in diſtinct legal aſſociations called *tithings*, or *decenaries*, from the incorporated number of *houſeholders* in each: and, though all youths of 12 or 14 years of age, as alſo lodgers, journeymen, and male ſervants, were likewiſe obliged to attend the great annual court of *frankpledge*, and be there ſworn to the king's peace, and be alſo regularly included in the *decenary* and trained in the uſe of arms, together with the *ten* houſeholders in whoſe families they were reſpectively included and numbered, yet the *ten houſeholders only* were properly *freo-borges*, becauſe they were the reſponſible perſons, who *pledged all the reſt*, and had a fixed habitation, and certain

certain intereſt in the ſtate, paying ſcot and lot, being liable to all *national*, as well as *county* and *pariſh*, rates.

And theſe ten *Freeborgs* of each *tithing* were ſtill farther diſtinguiſhed by the title of *deciners*, (i.e. *decenarii*,) a term very properly expreſſive of their rank and quality as fixed and permanent members of a *decenary*, conſiſting of *ten* ſuch aſſociated members, one of which was annually elected *chief of the ten*, or *tithingman*.

The term *deciner* has been very much miſtaken and miſrepreſented by law-writers; ſome applying it merely to the headborough, or *capitalis-friborgus*, the *tithingman*, or head of each ten *free-burgeſſes*; and others, again, to *every man* that was included in a *tithing*; which is a groſs abuſe of the term: for a *tithing* may conſiſt of many more than *ten*, (even 20 or 30 males,) yet the *ten houſekeepers*

who are principally reſponſible and thereby actually conſtitute the *decenary*, both in number and title, thoſe *ten* alone are properly the *deciners* of a *tithing*.

Again, the word *denizen* has ſtrangely puzzled the etymologiſts; who have ſought its derivation, ſome from the French tongue, others again from the antient *Britiſh*, but both equally in vain: For, though it appears, that the *Britons* had the term *denizen* in uſe amongſt them before the coming in of the Anglo-Saxons, yet, as all the *Roman colonies*, eſtabliſhed among the Britons, were not only divided into *centuriæ* or *hundreds*, but had alſo their *decuriones*, and conſequently *decenaries* alſo, (for the captain of *the ten* could not be without *the nine* whom he headed,) both in their *civil* and *military* government, it is clear, that the term *denizen* is of pure *Latin* original, from the numeral adjective *deni*, forming the Latin verb

denizo,

denizo, to expreſs the adoption of any perſon into all the franchiſes and rights of a *decenary*. And our law-writers have regularly uſed the participle *denizatus*, and the derivative ſubſtantive *denizatio*, to expreſs the introduction of *aliens* to the franchiſes of natural-born ſubjects, and yet they have not perceived the obvious meaning of theſe words both in ſenſe and ſound.

For, the alien is admitted by *denization* to all the rights of mutual protection enjoyed by the community of natives in their eſtabliſhed *decenaries*; and if he then becomes a houſekeeper, and one of the *ten* houſekeepers, who jointly conſtitute a tithing, or *decinary*, he is, of courſe, a *deciner*; and, with other *deciners*, is an incorporated member of the county which he inhabits; for, as the *hundreds* are the conſtituent parts of the *county*, and the *tithings* the conſtituent parts of each *hundred*, it neceſſarily follows, that the

deciners are ſuitors of the *county-courts*; which right at preſent is very improperly attributed to the *freeholders*, or (more properly) to the *land-owners* alone; for the right of the deciners, or *free burgeſſes*, to the county-courts is demonſtrated by the examples which have been given of general elections for *knights, citizens, and burgeſſes, all together promiſcuouſly in the county-courts*; which I have recommended in a former tract *, as *one* means of reducing the enormous diſproportion of repreſentation (at preſent enjoyed by ſome particular *boroughs*, to the effectual diſfranchiſement of all the reſt!) whereby the kingdom has loſt the means of expreſſing the *ſenſe of the people* in parliament; and the king has been *deluded* by majorities of alternate factions; factions, which, falſely calling themſelves *the commons of England*,

* See "Equitable Repreſentation neceſſary to the "Eſtabliſhment of Law, Peace, and good Government," &c. p. 22-29.

England, have plunged the nation into deſperate meaſures and enormous expences, and thereby loaded it with a burden, which it cannot poſſibly bear and retrieve without a ſpeedy reformation.

Though the repreſentatives of cities are now called *citizens*, yet it appears that all cities and large towns have their right of voting as being ancient *boroughs*; that is, they had their right of voting from the inhabitants being *freo-borges*, or *free-pledges* of each other, in their reſpective *decinaries*, as *deciners*; and their right of becoming *deciners* aroſe from their being *houſeholders*, "*paying certain rent per* "*annum*;" or "*paying each of them year-*"*ly an annual rent*:" for, that is the true definition of *burgage-tenure*, as deſcribed by Littleton; and therefore, not only *houſeholders* whoſe houſes are their own property, but alſo EVERY RENTER OF A HOUSE, OR TENEMENT, *who is equally liable*

able to bear the burdens of the ſtate, by being rated to all public and parochial taxes, OUGHT TO BE ADMITTED TO VOTE FOR THEIR REPRESENTATIVES IN PARLIAMENT; a right which they anciently enjoyed. " *For of ſuch* OLD *towns, call-*
" *ed* BOROUGHS, (ſays Littleton, p. 109 b.)
" *come the* BURGESSES *of the parliament,*
" *when the king hath ſummoned his par-*
" *liament.*"

The *ancient city* of Weſtminſter, and many other cities *, as well as the *ancient borough* of Southwark, ſtill retain the original uſage and rights of *burgage-tenure*, the mere *renters of houſes*, or *houſeholders*, throughout *all the pariſhes* reſpectively included in each, being ſtill entitled to vote by ancient preſcription, which clearly proves the original nature of *burgage-tenure*, though it is very much alter-
ed

* " For the towns, that now be *cities* or counties, in
" old time were *boroughes*, and called *boroughes*, for of
" ſuch old townes, called boroughs, come the burgeſſes
" of the parliament, &c." Lit. p. 109. b.

ed in ſome other places, partly through the encroachments of *purchaſers of boroughs*, to reduce the number of voters; and partly by granting excluſive privileges to a *few people* in the incorporated chartered boroughs.

The ſhorteſt and moſt eaſy mode of reſtoring, to *all the houſeholders of this realm, their ancient right of voting*, is, firſt, to reſtore their ancient capacity of DECINERS, by adviſing them to *throw themſelves* into tithings, or *decenaries*; and to hold annual courts of *Frankpledge* (now too long neglected) for the *renewal* and continual preſervation of the *tithing aſſociations*.

By this means both the *civil* and *military* government of the people will be completely reſtored, and peace and defence will be completely ſecured, ſo that *houſebreaking* and *robbery* will no longer be known amongſt us; for, ſuch was *once* the happy ſtate of the kingdom; and ef-

fected

fected by the *very ſame* regulations here recommended. A farther advantage, by reſtoring this ancient, legal, and conſtitutional, mode of government, will be, that the exact proportions of the people in each county, who have a *right to vote*, will be truly aſcertained; whereby may *hereafter* be introduced a repreſentation of all the counties, *perfectly equal*, in proportion to their reſpective numbers of *houſeholders*: for if, in each county, diviſions were formed, conſiſting each of 200 *decenaries*, or *tithings*, (including 2000 houſeholders each,) that proportion will be found, on calculation, to contain the moſt convenient and proper number to be joined in the election of *one deputy* for parliament, in order to obtain an *equal repreſentation* of *all the families in the kingdom*; and no perſons will be excluded but ſervants and others, who have *no fixed habitation of their own*; and, conſequently,

at

at preſent, have no permanent intereſt in the ſtate; or, at leaſt, do not bear ſo large a proportion of relief to its burdens as the *houſekeepers* do.

Two thouſand families might well afford to pay ample wages to *one* repreſentative; and the ſtipend might be very eaſily collected, if the *decenaries* were duly formed and eſtabliſhed, and the ſeveral courts which regularly ariſe from the *decenaries*, viz. the *hundred-courts*; and thoſe which might moſt conveniently be added to ſuperintend and regulate the *hundred-courts*, viz. the court of *one thouſand* families, (anſwering to thoſe of the Iſraelitiſh commonwealth, the *thouſands* of Ephraim, the *thouſands* of Judah,) and laſtly the junction of TWO *ſuch courts of the thouſand, for the election of* ONE *repreſentative*. This laſt propoſed court of 2000 *houſeholders* would probably be

equal to what ſome of the old *trithing-courts* formerly were; which are ſaid to have ſometimes included the third or fourth part of a county.

If every diviſion of 2000 *families* were to elect *one* deputy to repreſent them in the great *common council* of the kingdom, the whole number of *repreſentatives*, for South Britain, would amount (according to the preſent ſtate of population) to about 476*; by which there would be a profitable reduction of 37 members.

This would be no *innovation*, becauſe this election would ſtill be veſted where it ought, viz. in *all the free houſeholders*, or

* This calculation is formed from the account of the number of houſes charged, chargeable, and excuſed, in 1777, viz. 952,734. See Dr. Price's Obſervations on the Population of England and Wales, p. 11. In my former propoſal, from which this is extracted, where I make the number of repreſentatives amouut to 500, I have, for the ſake of a round number, followed Dr. Price's advice, when he ſays, concerning the number of houſes, in p. 14. "*let it however be ſtated* (ſays he) *at* "*a million.*"

or *free-borges, of all* the counties; and that in the moſt *perfect proportion* of *equality*: and this order of *equity* would not be liable to change or to be corrupted, becauſe the number of deputies, or delegates, would riſe or fall in due proportion with the degree of population in each county, from time to time.

GRANVILLE SHARP.

TRACT, Number III.

Being a *Memorandum* on a late Propoſal for a New Settlement to be made on the Coaſt of AFRICA; recommending, to the Author of that Propoſal, ſeveral Alterations in his Plan, and more eſpecially the Adoption of the ancient Mode of Government by *Tithings* (or Decenaries) and *Hundreds*, as being the moſt uſeful and effectual Mode of Government for all Nations and Countries.

THE propoſal for a ſettlement on the coaſt of Africa will deſerve all encouragement, if the ſettlers are *abſolutely prohibited from holding any kind of property in the perſons of men, as ſlaves, and from ſelling either man, woman, or child.* Even *to claim* any human perſon, as *a ſlave*, ought to be conſidered as an affront to the whole community, and be puniſhed accordingly.

With reſpect to the propoſal for leave to *purchaſe ſlaves*, the permiſſion, if granted at all, muſt be very carefully guarded; and the price given muſt be conſidered and declared, at the time of purchaſe, to be a mere *pecuniary debt for redemption*, due from the perſon purchaſed to the ſociety, or ſtate, of the ſettlement; and by

no

no means to be transferred to any ſingle individual, (which would introduce domeſtic tyranny and traffic in the bodies of men,) but the debt to be diſcharged at leiſure, without increaſe or intereſt, whenever the redeemed, or his friends, ſhall tender the amount of the firſt price; in default of which, the price ſhould be worked out by a limited proportional ſervice to the ſtate; and the ſtate ſhould hold forth, at the ſame time, ample encouragement to engage compliance and ſubmiſſion: but it ſhould be an eſtabliſhed principle, that the ſtate or ſociety ought rather to loſe the value of the purchaſe than, *by compulſion, to enforce involuntary ſervitude*, whereby honeſt labour, that ſhould always be deemed honourable, is rendered odious and ſlaviſh.

Rules muſt alſo be laid down to prevent *the monopoly of land* within the bounds of the ſettlement: and a ſufficient reſerve of

land

land muſt be made for public ſervices *(ſchools and religious inſtruction)* in each townſhip; and for *cottage-land* to be diſtributed in ſmall parcels to new ſettlers and redeemed captives; which parcels *muſt revert to the ſtate or community, for the ſame benevolent inveſtiture to others of the like condition*, as ſoon as the temporary poſſeſſors are enabled to purchaſe larger lots; for it will prevent, in ſome degree, the monopoly of land, if the *cottage-lots* are untenable with other land. *Common land* ſhould alſo be reſerved for a competent diſtance round each town and village, wherein *all inhabitants*, rich and poor, ſhould have an *equal perſonal right:* becauſe *the claims of rich landholders*, when made in proportion to the ſize of their bordering eſtates, is unreaſonable and unjuſt; and has occaſioned a cruel perverſion of the utility of common lands in England: for the live ſtocks of rich

farmers, occaſionally turned looſe upon the commons, generally deprived the cattle of the poor inhabitants of their neceſſary ſuſtenance; and the late diviſions for encloſures, by act of parliament, having been, for the moſt part, inconſiderately granted in the ſame unjuſt proportions, have at length nearly annihilated *the common lands of England:* whereas, on the contrary, the large poſſeſſions of the neighbouring landholders ought, in reaſon and natural juſtice, rather to have excluded them from the leaſt ſhare in the inheritance of the poor inhabitants; or, at moſt, their ſhare ſhould have been *merely perſonal*, as men and individuals, *equal to*, but not exceeding, the claims of their neighbours, that the *common lands* might be truly *in common*.

The managers, entruſted with the ſociety's property to form the ſettlement, ſhould have no ſettled dominion, or authority,

thority, over the people as governors or judges, but ſhould be contented with that ſuperiority and influence, which their pecuniary truſt, as agents and overſeers for the ſociety, will naturally afford them; and their ſervices may be amply rewarded and encouraged, after the firſt year's ſalary, by an admiſſion to a due proportion, or ſhare, with the members of the ſociety in the general profits of the ſettlement, and in the profits of the common or public trade of the ſociety; but *no private trade* whatſoever ſhould be permitted to any of the ſociety's managers and agents.

The officers for internal government, as the governor or mayor, the ſheriffs and other magiſtrates, conſtables, &c. &c. ſhould be *freely elected, every year, by all the inhabitants*, due qualifications being premiſed to render men eligible to offices of dignity and truſt.

The purpoſes of the defence, legiſlation, public juſtice, government, and ſubordi-

nation, of the ſettlers, and their union as a community, (however large and extenſive the ſettlements may hereafter become,) are points more eaſily to be accompliſhed than is generally conceived; provided the antient Anglo-Saxon government by *mutual frankpledge* in *tithings* (or decenaries) and *hundreds** be duly adopted; and this being

* A ſhort, yet very comprehenſive and well ſtated account of this ancient mode of government was publiſhed in the year 1780,* on the ſpur of an occaſion which too clearly demonſtrated the lamentable want of this excellent inſtitution: I mean the dangerous riots in that year, which could not have proceeded to ſuch an alarming exceſs, had not this inſtitution been long diſuſed, for otherwiſe "*the civil power*," as the ſenſible author remarks, "would have fully guarded us from its outrages," p. 45. "I aſcribe" (ſays he, in letter II. p. 27.) "the complete formation of thoſe general outlines, by which we have ever defined the Engliſh conſtitution, to *Alfred*, on the authority of hiſtorians, who ſpecify the particular regulations which rendered his government ſo happy as well as glorious; which have been, in ſome degree, preſerved amidſt violent and numerous revolutions; to which every Engliſhman

* Printed for G. Kearſley, No 46, Fleet-ſtreet, intitled, "A Plan of Aſſociation, on conſtitutional Principles, for the Pariſhes, Tithings, Hundreds, and Counties, of Great-Britain; by which the Outrages of Mobs, and the Neceſſity of a military Government, will be prevented, and the Engliſh Conſtitution in a great Meaſure reſtored. In three Letters to a Member of Parliament."

being already conſiſtent with the common law and antient conſtitution of this king-

dom,

" man has an unconquerable partiality; and the reſto-
" ration of which, to their proper vigour and effect,
" would ſecure our perſons and property, and preſerve
" that peace and order which are ſo eſſential to the hap-
" pineſs of the community.

" Keeping in view thoſe general, thoſe beautiful,
" outlines which were formed by the inſtitutions of our
" early anceſtors; over which the people ſighed when
" broken and deformed by the Norman conqueſt, by
" the bloody conteſts of the houſes of Lancaſter and
" York, by the tyranny of the houſe of Tudor, and
" the folly of that of Stuart; and an attention to which,
" alone, rendered the revolution a bleſſing; we muſt
" define an Engliſh citizen to be a free man; who is
" to owe his protection, and the ſecurity of his family
" and property, to a civil government, of which he is
" an eſſential member.

" You will obſerve, ſir, that I confine myſelf to one
" object, or one part of our conſtitution, which pro-
" vided for the ſafety of individuals, and the preſer-
" vation of order, by the following regulations, ſtill
" exiſting in names and forms; the revival of which
" would be the moſt beneficial and popular act of go-
" vernment which can well be imagined.

" The whole kingdom was, as it is now, divided
" into COUNTIES, HUNDREDS, and TITHINGS. *Ten*
" *families* were aſſociated, their names entered, their
" occupations defined: the males in them, from eighteen
" to fifty, or ſixty, years of age, pledged themſelves for

" the

dom, (ſtill deemed *legal*, though not in uſe,) might be lawfully eſtabliſhed, even if the ſettlement

" the ſecurity of the *tithing*; and to obey the ſummons " of the *decanary*, or *tithingman*, on the leaſt apprehen- " ſion of danger. They were furniſhed with ſuch arms " as the times afforded.

" The perfect knowledge which every neighbour- " hood had of its inhabitants; the concern which every " man had in the ſecurity of every man; and the obli- " gation which every decennary was under to be an- " ſwerable for his tithing; either prevented all viola- " tions of peace and order, or corrected them at their " firſt origin.

" All the decennaries, or tithingmen, were *choſen by* " *the people* once a-year; and this is an *eſſential* circum- " ſtance in the inſtitution.

" The ten tithingmen of every diſtrict, called a hun- " dred becauſe it contained a hundred families, choſe " a perſon to preſide over the hundred, to whom they " made their appeals, and who had a power of calling " them out. All theſe were amenable to the earl or " count who governed the county; and he was amenable " to the king, who, either by the *earl or by the ſheriff*, " *both of which were of his own appointment*,* could call " out the whole force of a county, or of any number " of counties, as the public exigences required; while " the internal peace and order of each diſtrict was pro- " vided for without his interference, and in a manner " perfectly conſiſtent with his general authority and in- " fluence.

" Nothing

* The worthy author in this point is miſtaken: the ſheriff, as well as the earl and *heretoch*, were, in ancient times, *choſen by the people*.

ſettlement is made within the boundaries of the preſent Engliſh claims; but, in that

" Nothing has ever been imagined more ſimple in its " conſtruction, or more effectual in the execution, than " this part of the Engliſh conſtitution. The ſeveral " powers of it, which in moſt caſes are in eternal diſ- " cord, are here ſo happily blended, that the people " are ſecure and free; the king's power extends to " every thing but miſchief, and is, in reality, greater " than can be obtained on any other plan.

" Theſe regulations might be eaſily reſtored and ren- " dered as effectual as ever. The prepoſſeſſions of the " people are ſtrongly in their favour; and, perhaps, " no others can be contrived which will not ſet the body " of the people *at enmity* with government; which will " perfectly allay their apprehenſions and jealouſies; " will make them the miniſters of their own ſecurity, " while the power of the king *reaches every individual of* " *them, by a chain, every link of which is effectual*, and " *will not interfere with the prerogative of the king in other* " *departments of the ſtate*, however the buſineſs of them " may be adminiſtered. * * * *

" If you mean that it is impracticable," (ſays he, in letter III.) " becauſe the inhabitants of this country are " too far advanced in luxury, too indolent, too effemi- " nate, to enter on any plan of ſecurity which will re- " quire the leaſt trouble or put them to the leaſt incon- " venience; and, if you can aſcertain this fact, I have " no anſwer to make. But the trouble and inconve- " nience are ſuch as would not be complained of by " women. What is it but an amuſement to learn the

" common

that caſe, the legal proceſs in all the courts of juſtice muſt be carried on in the

" common uſe of arms? What inconvenience to ſub-
" mit to ſuch regulations as may bring together a neigh-
" bourhood, a pariſh, the ward of a city, a town, a
" diſtrict, &c. to clear them of vagabonds, occaſionally
" to aſſiſt the civil magiſtrate, and to lay the baſis of a
" general ſecurity, confidence, and ſtrength, where it
" ought to be laid, in the whole body of the people?
" I will venture to affirm, that there is no other me-
" thod by which diſturbances, riots, and inſurrections,
" can be prevented, without debaſing the people into
" the condition of brutes: and there is no other me-
" thod by which a king may hold every man in the na-
" tion in his hands; while every man in the nation
" would feel and know himſelf to be as free as it is
" poſſible he ſhould be in ſociety.
" Hints have been thrown out of acts of parliament
" which render ſuch aſſociations, as I recommend, ille-
" gal; but the acts are not ſpecified. I know there are
" laws, forbidding a man's going armed, in a time of
" tranquillity and peace, without leave from a magiſ-
" trate, and ſpecifying ſuch aſſemblies of people as are
" dangerous and ſeditious; but without the moſt diſ-
" tant reference to the right which every man has, from
" nature, from the connivance of the moſt deſpotic
" governments, and from the expreſs proviſions of the
" Engliſh conſti ution, to provide for his own defence
" and that of his family; and to unite with his neigh-
" bourhood, under the eye and direction of the ſupreme
" magiſtrate,

the king's name; and the ſettlers may not refuſe to admit a governor, or lieu-

" magiſtrate, for the general peace and order of the " community.

" If there were ſuch laws as you mention, they could " not poſſibly have effect, againſt not only *a neceſſary* " *right of nature, but an eſſential principle of the Engliſh* " *conſtitution.* If a law were made, that, becauſe it is " *poſſible* an Engliſh elector may become venal, there- " fore all electors muſt relinquiſh the right of voting,— " would this conſtitute an obligation? Will any man " ſay, that the legiſlature is competent to the making " of ſuch a law?—how much leſs to annihilate the firſt " and moſt important principles of human ſociety, by " awarding, that, as it is poſſible men may make an " improper uſe of their limbs, or their arms, which " may be as neceſſary as their limbs, they muſt therefore " ſuffer them to be *taken off.*

" The power of the legiſlature, like every power in " human ſociety, is limited by certain and accurate " bounds; it may exceed theſe bounds, and commit " abſurdities, and even offences. The Engliſh legiſ- " lature is juſt as competent to make a law, by which " every Engliſhman may be baniſhed to the Orkneys, " or put to death, as it is to enjoin the people to give " up the right of ſelf-defence and preſervation, by the " uſe of their limbs, or by the uſe of arms.

" The apprehenſion that aſſociations will produce " commotions and riots, inſtead of preventing them, " muſt be pretended only. And all the arguments for " depriving the people of the right of aſſociating, be-

" cauſe

tenant, of the king's appointment, with a *limited* delegation of authority, according to the conſtitution of England, whenever

" cauſe they have often aſſembled for miſchievous pur-
" poſes, are deluſive. Cardinal de Retz ſays, that all
" numerous aſſemblies are mobs; and I will add, that
" all mobs are miſchievous. Let the people, who
" might form ſuch aſſemblies, *be divided into ſmall bo-*
" *dies*; *and, though the individuals be not improved, they*
" *will act reaſonably and well.* The deſign of aſſocia-
" tions is, to *prevent large and tumultuous aſſemblies*; *to*
" *arrange the people under the eye of government*, as accu-
" rately as an army, *without diminiſhing their conſtitutional*
" *independence and liberty*; to increaſe the difficulty of
" miſleading them, and to deſtroy all ideas of *appeals to*
" *them.*

" Here I beg to be underſtood, not as aiming at any
" of the rights of the people: but the idea of an *appeal*
" *to them* has been borrowed from the government of
" *Rome*; in England it is, like the introduction of mi-
" litary force, a thing that negligence or miſmanage-
" ment may render *neceſſary*; but the conſtitution is
" perfect without it; no ſuppoſition is made of the poſ-
" ſibility of having any occaſion to make it; and, when-
" ever it is made, the remedy may be as hazardous as
" any evil it can be deſigned to remove. A whole
" nation, like the human body, in order to act with
" harmony and pleaſure, *muſt be divided into ſmall parts,*
" *each having its local power, ſubject to the direction and*
" *controul of the general will.*" P. 38 to 44.

ever the privy council ſhall think proper to ſend one.

But, if the ſettlement be attempted in any other part of Africa, not claimed by European powers, the managers muſt firſt obtain the conſent (and aſſociation, if poſſible) of the native inhabitants, or elſe the eſtabliſhment muſt be made on an uninhabited part of the coaſt: and, as the majority of the ſettlers will probably be negroes, returned from ſlavery and oppreſſion to their *native* ſoil, there will be no neceſſity to form the plan of government ſtrictly by the conſtitutional model of England, any farther than reaſon and experience may ſuggeſt the adoption of ſome particular parts of it: but we may, in that caſe, aſſume the liberty of drawing a precedent for government from more antient and more perfect documents than our Saxon records, viz. from the example, or rather the original intention, of *the Iſ-*

raelitiſh commonwealth, purified and improved by the general precepts and *maxims of the goſpel*, and by the example of *free congregational government amongſt the primitive Chriſtians*, who decided their own temporal litigations and differences, (τα βιωτικα, "*things pertaining to this life*," 1 Cor. vi. 1–8.) as well as eccleſiaſtical queſtions, in their regular aſſemblies of *all the people*: which method was an ancient ethnic cuſtom, (derived probably from patriarchal times,) as appears by the example of the pagan Epheſians, recorded in Acts xix. 38, 39. whom their town-clerk referred to *a lawful aſſembly* (τη εννομω εκκλησια, apparently diſtinct, as the context proves, from their *ordinary courts of juſtice*, then ſubject to the Romans) for the *examination* and *reſolution* of all extraordinary queſtions.

The Iſraelitiſh government, under the theocracy, was adminiſtered by *freely-elect-*

ed

ed judges and officers (ſee my tract on the Law of Nature, p. 325 to 329.) throughout all the tribes and cities or gates; except in the extraordinary caſes of prophetical judges; though theſe were probably *elected* likewiſe, as ſoon as their ſuperior, or ſupernatural, abilities became generally known.

They had a regular gradation of official power, heads of *tens*, of *fifties*, of *hundreds*, and of *thouſands*; beſides the provincial governors, who were ancient heads of houſes or tribes: theſe altogether formed *one great band of allegiance*, uniting the whole community together for *action and defence*, as *one man*, with *one mind*, viz. by the free reſolutions of the majority; the ſmaller diviſions being regularly included and controuled in the larger, and the individuals of all the diviſions being mutually bound to each other by the reciprocal ties, or allegiance, of *frankpledge*,

frankpledge, which our Saxon anceſtors, and many other, even ſavage and heathen nations *, have in ſome degree maintained, probably from the patriarchal times. For, all men (having *the knowledge of good and evil)* are capable of this form of government, if it is once properly explained to them, and eſtabliſhed: and there is no mode of defending, reſtraining, and keeping in order, a promiſcuous body of men, ſo cheap, ſo eaſy, or ſo certainly effectual for every profitable purpoſe, as that of *mutual government* by the principles and maxims of *right*, in ſuch equal-proportioned congregations; each of which is a conſtituent part, or member, of a more powerful congregation, in the great *unity*, or

* The Romans had their *decuriones* and *centuriones*, not only in their *military*, but alſo in their *civil*, government; and, conſequently, they muſt have had the popular diviſions of *tithings* and *hundreds* much in the ſame manner as thoſe eſtabliſhed by K. Alfred in England, in imitation of the Iſraelitiſh commonwealth; and even the *Chineſe* and *Japoneſe* (it is ſaid) have *tithings* to this day.

or *commonwealth*; wherein every individual, however violent or moroſe in himſelf, is prevented from injuring others, by having his perſon and his property rendered anſwerable for all damages, which he either occaſions by his own rapacious violence or caprice, or which he does not endeavour to prevent in others, as a member of the *tithing* wherein any violence or offence is committed: for, according to the law of *frankpledge*, no man is entitled to *liberty* *, that is not duly *pledged by his neareſt neighbours* for the mutual conſervation of *peace* and *right*.

Under this form of government, all public works, as entrenchments, or *earth-works*, and *fortifications*, to ſecure the towns and ſtrengthen the country; canals, and highways, for public paſſage; ſewers, and drains, for the general health of

* "Omnis homo, qui voluerit ſe teneri PRO LIBERO, "ſit in *plegio*, ut *plegius* eum habeat ad juſtitiam ſi quid "offenderit," &c. See Lambard's Archionomia, p. 125. b.

of the country, &c. may be formed and maintained by *a rotation of ſervice*; in which the value of daily attendance muſt be eſtimated, that defaulters may bear their ſhare, or rather a *double ſhare*, of the burden: and the expence of *watch and ward*, or *military ſervice*, muſt be defrayed in the ſame manner; by which means no debt will be incurred for the defence of the ſtate. Rich funds may alſo be obtained to ſupport the credit of a public exchequer, (without laying any perceptible burden on the community,) by a general agreement to puniſh, by fines and mulcts, in due proportion to the wealth and poſſeſſions of delinquents; increaſing likewiſe, by repetition, for all offences as well of *omiſſion* (or neglect of public duty) as of *commiſſion*; except for murder, rapes, and unnatural crimes, which, by the laws of God, are unpardonable by

any

any community. The people themſelves to be *judges*, people of the vicinage, unexceptionably diſintereſted; liable, beſides, to the challenge of the parties, and duly *ſworn* (according to the known laws of Engliſh *juries*) to do *right*, in the preſence of the ordinary judges, and officers elected to preſide and keep order in the aſſemblies.

GRANVILLE SHARP.

Old Jewry,
Aug. 1, 1783.

TRACT, Number IV.

An eaſy and practicable Plan for laying out Settlements on uncultivated Lands, in equal Diviſions of *ten Tithings*, or 100 Families each; whereby new Colonies may be moſt advantageouſly formed and extended in regular Diſtricts of *Hundreds*, agreeable to the ancient legal Diviſions of our Anglo-Saxon Anceſtors.

SEVERAL years ago I made ſome memorandums of "*A Method of forming frontier Settlements*," which I copied from the ſecond edition of a book firſt printed at Philadelphia, but reprinted at London in 1766, and intituled "*An Hiſtorical Account of the Expedition againſt the Ohio Indians, in the Year 1764, under the Command of Henry Bouquet, Eſq. to which are annexed Military Papers, containing Reflections on the War with the Savages; a Method of forming frontier Settlements*," &c. My reference for the laſt-mentioned ſubject is to p. 51 of the ſaid book; but, as I have not the book itſelf at preſent, I cannot pretend to be perfectly accurate in my quotations from it; neither do I remember

member whether the author recommended a government by *tithing* and *hundred* courts, with their proper officers, according to the Anglo-Saxon model; but only that his propoſed ſettlements were (happily for my preſent purpoſe) laid out in equal diviſions of *one hundred* lots each, for the maintenance of *one hundred* families; ſo that, of courſe, the conſtitutional regulations for *hundreds*, recommended in the preceding tracts, will not be leſs ſuitable and beneficial to *his* ſcheme than *his* certainly is to mine.

" Let us ſuppoſe a ſettlement" (ſays he) " to be formed for *one hundred fa-*
" *milies*, compoſed of five perſons each
" upon an average."

" Lay out upon a river or creek, a ſqu. of 1760 yards;
" or a mile for each ſide.
" That ſquare will contain 640 acres.
" Allowance for ſtreets and public uſes 40
" To half an acre for every houſe 50 } 640 acres.
" To 100 lots at 5½ acres 550

" The four ſides of the ſquare meaſures 7040 yards, which gives to each
" houſe

" houſe about 70 yards in front, to ſtoc-
" kade, and the ground, allowed for
" building, will be 210 feet front and
" about 100 feet deep."

" An acre of ground will produce at
" leaſt 30 buſhels of Indian corn; there-
" fore, two acres are ſufficient to ſupply
" five perſons at the rate of 12 buſhels
" each perſon; two other acres will be
" for cows and ſheep, another for hay,
" or to be ſown with red clover; the re-
" maining half acre may be laid out for
" a garden." Thus far the author's plan may be applicable to lands even in England, eſpecial y if laid out in leſs diviſions of *tithings*, inſtead of *hundreds*, preſerving the ſame due proportion of land in lots for each family. The *ten* families with their habitations would form a compact little village, under the government of a *tithing-man*, annually elected from among themſelves, whereby all would

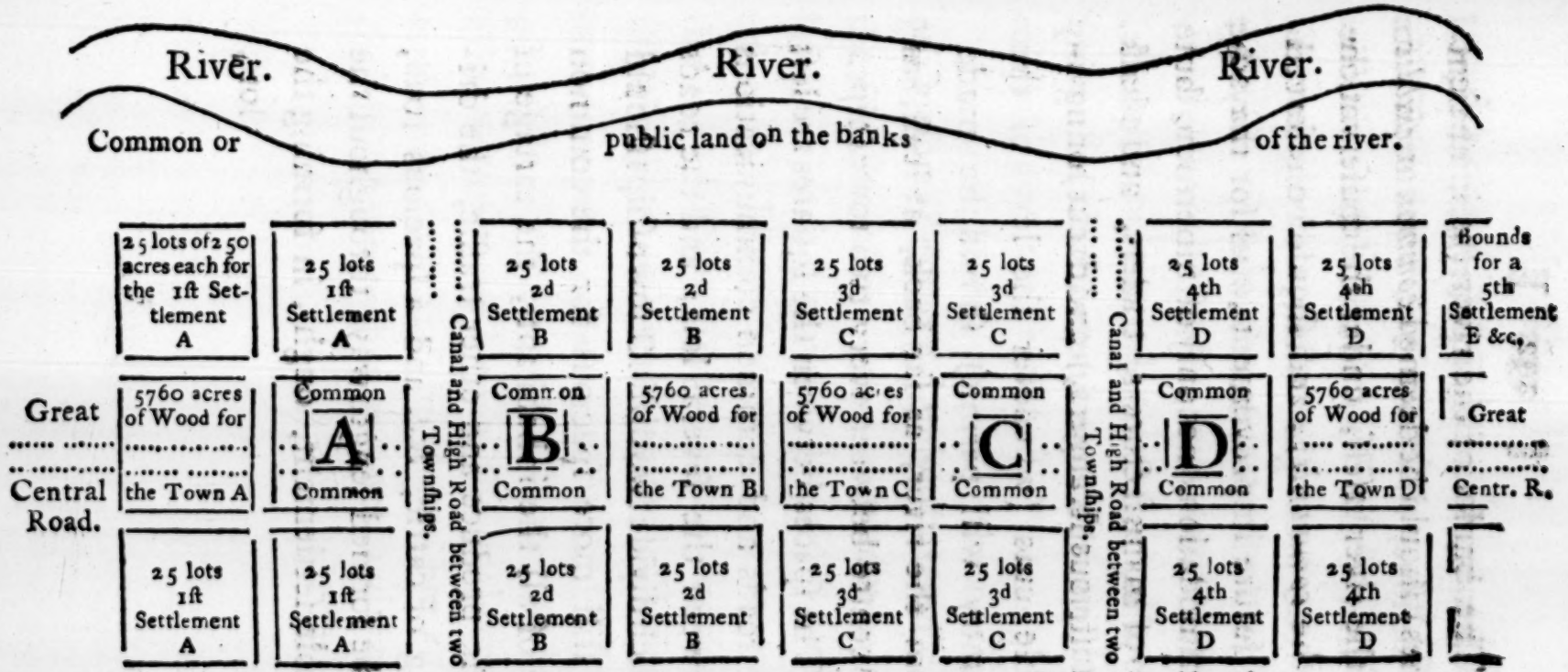
would be rendered mutually reſponſible for each other, for the common peace; and to make good every damage that might be occaſioned by the ill behaviour of any individual among them. An eſtate laid out in ſmall farms, with ſuch a *tithing* village in the centre of it, for a conſtant ſupply of labourers, might be made to maintain a much greater number of people than land generally does in the ordinary way of farming; and would, conſequently, be much more beneficial both to the landlords and to the nation at large. Commons and waſte foreſts or chaſes might thus be laid out and occupied by the labouring poor, to the great reduction of pariſh rates as well as of the price of labour; for, free and uſeful labourers would never be wanting, if ſuch a regular proviſion, under their own management could be found for their families. But the poſſeſſion of ſuch pariſh-lots ſhould be

be limited to thoſe perſons, who occupy no other land; and ſhould be delivered up to the pariſh or community, for the uſe of other unprovided families, as ſoon as any poſſeſſor obtains more land, either as a farm, or in fee, (as recommended in a former Tract,) to prevent *the monopoly of land*, and the entire deprivation of the poor from any ſhare in it as at preſent.

The remainder of the author's ſcheme is ſuitable only to unoccupied countries, like many parts of Africa and America, where the people are few, and the lands of ſmall value, viz. "Round the town" (ſays he) "are the commons of three "miles ſquare, containing, excluſive of "the lots above-mentioned, 5120 acres. "On three ſides of the town, five other "ſquares will be laid out, of three ſquare "miles, containing 5760 acres each; "one of which is reſerved for wood, for "the uſe of the ſettlement; the other four

" to be divided into 25 out-lots, or plan-
" tations, of about 230 acres each; ſo
" that in the four ſquares there will be
" 100 ſuch plantations, for the 100 fa-
" milies. Another townſhip may be
" laid out joining this, upon the ſame
" plan, and as many more as you pleaſe,
" upon the ſame line, without loſing any
" ground."

The following is a rough Sketch of the whole.


River.
River.
River.
Common or public land on the banks of the river.
25 lots of 250 acres each for the 1st Settlement A
25 lots 1st Settlement A
25 lots 2d Settlement B
25 lots 2d Settlement B
25 lots 3d Settlement C
25 lots 3d Settlement C
Canal and High Road between two Townships.
25 lots 4th Settlement D
25 lots 4th Settlement D
Bounds for a 5th Settlement E &c.
Great Central Road.
5760 acres of Wood for the Town A
Common A Common
Common B Common
5760 acres of Wood for the Town B
5760 acres of Wood for the Town C
Common C Common
Common D Common
5760 acres of Wood for the Town D
Great Centr. R.
25 lots 1st Settlement A
25 lots 1st Settlement A
25 lots 2d Settlement B
25 lots 2d Settlement B
25 lots 3d Settlement C
25 lots 3d Settlement C
25 lots 4th Settlement D
25 lots 4th Settlement D

The banks of the river (as in ancient times) ſhould be deemed *common* or *public* as the river itſelf, under the conſervation of the *community*; and ſhould be reſerved for future improvements, (as for the accommodation, not only of fiſhermen, but alſo of manufacturers, traders, and of all induſtrious ſtrangers,) and docks, or navigable cuts (whenever the level of the country will permit) ſhould be made from the river, as far back, at leaſt, as the centre between every two townſhips.

The ſpaces between the ſquares are left for roads and common communications between the ſeveral lots; and the roads which divide two diſtinct townſhips ſhould be ſtill more ſpacious for the common uſe of all the inhabitants, the cartage of their produce and other traffic, the driving of cattle, &c. and a ſpacious road, to be formed lengthways throughout the whole ſettlement, ought, in forming the lots,

lots, to be reſerved throughout the centre of each townſhip: the central lots, which will thereby be diminiſhed in *ſize*, will find ample compenſation, in *value*, by their ſituation on the great central road, which I have expreſſed by a dotted line. I do not remember whether any roads, or ſpaces for them, were expreſſed in the original plan of the author.

I would likewiſe deviate from the original plan of the author, with reſpect to the ſituation of the 5760 acres of woodland for each townſhip; which, I conceive had better be reſerved in one of the moſt diſtant ſquares, at an angular ſituation from each town, inſtead of being in the oppoſite ſquare, according to his propoſal: for the towns will not only be more healthy, by having the uncleared lands more diſtant from them, but alſo the inhabitants, when on watch and ward

duty,

duty, will be better enabled to diſcover the approach of any lurking ſavages, or other enemies in time of war.

GRANVILLE SHARP.

Old Jewry,
Aug. 1, 1783.

TRACT, Number V.

A farther declaration of the ancient *popular*, or *congregational*, *Right to elect Biſhops*; intended to illuſtrate, more effectually, a Maxim of the Common Law, cited in p. 91, viz. "*Ordo Epiſcoporum eſt Robur Reipublicæ.*" Jenk. Cent. p. 56.

" ORDO EPISCOPORUM EST ROBUR REIPUBLICÆ."
Jenk. Cent. p. 56.

IT is an eſtabliſhed maxim of the common law of England, that " *The order of biſhops is the ſtrength*" (force or hability) " *of the commonwealth.*" But, in order to render this maxim obvious and unqueſtionable, we muſt neceſſarily imply and include, in the *epiſcopal* function, that very important branch of it already mentioned, viz. the preſiding as chief *popular* magiſtrates in the *congregational* courts of common law *; and we muſt alſo ſuppoſe the continuance or reeſtabliſhment of the *primitive chriſtian freedom* in epiſcopal elections; that the biſhops, by real *popular* elections, may be truly *popular* magiſtrates, worthy to

* See ſecond note in p. 92. " *Leges Edgari,*" &c.

be entruſted with the *civil* as well as the *eccleſiaſtical* INTERESTS *of the common-wealth*. Mr. Sadler, in his "*Rights of* "*the Kingdom*," ſpeaking of the time of K. Henry II. ſays,—"*It ſeemeth conſide-* "*rable, how all hiſtorians (of that time* "*and diſpute) do record*, THE CHOICE "OF BISHOPS *to be in the* PEOPLE: *in* "PLEBE and in POPULO, *as well as in* "CLERO. *They mention* RADULPH, *or-* "*dained a biſhop for the Orcades: but* "*rejected by all, becauſe not elected by* "COMMON ASSENT *of the* PEOPLE; PLE- "BIS, CLERO *, PRINCIPIS, it is *every* "*where in the old monks; and how the* "*poor biſhop wandered up and down, as an* "*aſſiſtant to other prelates*, &c." See p. 235, and more inſtances alſo at p. 243. The learned author of a tract, (printed ſeveral years ago, as appears by the liſt of tracts publiſhed at the ſame time, but without a date,) intituled, "*Lex Parlia-*

"*men-*

*For *cleri*.

"mentaria, or a Treatiſe of the Law and "Cuſtom of Parliament," &c. has cited various proofs of the *people's right* to elect biſhops.—"*That for ſome years,*" (ſays he,) "*after this new charter granted in "this Engliſh parliament,*" (meaning a parliament held at London by K. Henry I.) "*the* PEOPLE *were generally* RESTORED "*to the right of electing their own magiſ-"trates and officers, civil, military, and* "ECCLESIASTICAL; and this" (ſays the learned author) "I take to be the "*grand foundation of the* MAGNA CHAR-"TA of Engliſh liberties, i. e. as it gave "relaxation from Norman tyranny and "ſlavery. And this may teach us, that "the rights and liberties of the commons "of England, are neither ſo illegally "begotten as by rebellion, nor of ſuch "tender years, as ſome imagine. But, "if any man is not convinced from what "I have before produced, touching the

" origin of Engliſh parliaments, and the " antiquity of the houſe of commons, let " him peruſe the authors cited in the " margin *, eſpecially the treatiſe writ " by that learned judge Sir Robert At- " kins, on this very ſubject.

" Nor was this the firſt Engliſh par- " liament held under this king, Mat. " Paris has given us a brief account †, " which other authors confirm and en- " large, that one Ranulph, biſhop of " Durham, (whom Mat. &c. adorn with " the ſublime titles of, *Vir peſſimus, &* " *corruptiſſimus; homo perverſus & ad* " *omne ſcelus paratus; vir ſubacto ingenio* " *& profunda nequitia, &c.*) was impri- " ſoned, &c. by a common-council or " parliament of Engliſhmen. The whole " paſſage

* Dier 60 and 70. See Mirror, c. 1. ſect. 3. Bra. Flet. Lambard's Archaion, 57, 239, 245. Sir R. Atkins, p. 20. 17, &c. Vide poſt. c. 6 & 7.

† 37, 39. 2 Inſt. 15. Saxon Chron. ſub anno 1099. p. 208, 210. Flor. Wig &c. Mat. Par. 39.

" paſſage runs thus, *Eo tempore rex te-*
" *nuit in cuſtodia* Ranulphum Dunelmel-
" ſum, *epiſcopum hominum perverſum & ad*
" *omne ſcelus paratum, quem frater regis*
" i. e. *rex* Willielmus *epiſcopum* * *fecerat*
" Dunelm. & *regni* Anglorum *ſubverſo-*
" *rem; qui cum regi jam dicto nimium eſſet*
" *familiaris, conſtituerat eum rex, procu-*
" *ratorem ſuum in regno, ut* evelleret, de-
" ſtrueret, raperet, et diſperderet, *et om-*
" *nia omnium bona ad fiſci commodum com-*
" *portaret. Sed mortuo eodim rege iniquo*
" & Henrico *coronato, de* communi con-
" filio gentis Anglorum, *poſuit rex eum*
" *in vinculis*, &c.

" Nor was the concurrence of the com-
" mons in parliament requiſite only to
" the impriſonment or exauctoration of
" *biſhops* †, the ſame aſſent ſeems as ne-
" ceſſary, and that too in a ſuperior de-
" gree,

* " The office of a *court biſhop*."

† Rights of the kingdom, p. 118, 133, 140, &c.

" gree, as to their *election* or *confirma-*
" *tion*; divers inſtances of this appear in
" the hiſtorians of thoſe times: I ſhall
" ſelect ſome to prove it *then* the cuſtom
" of England, Scotland, Wales, Ireland,
" France, &c.

" Anno 1113, Ralph, biſhop of Ro-
" cheſter *, was elected archbiſhop of
" Canterbury by the king, *annuente plebe*
" *& clero* †; this was done *in communi*
" *conſilio apud Windſore* ‡. And I find,
" about the ſame time, that another
" Ralph, who had been ordained a bi-
" ſhop in Scotland, was rejected by all,
" becauſe not elected with the conſent
" of the people, &c. and, notwithſtand-
" ing his conſecration, was forced to
" wander about, and officiate as a coad-
" jutor to other biſhops.

" About the year 1120 ‖, one David
" was conſecrated biſhop of Bangor, by

" the

* Sax. Chr. p. 306.
† Eadmer.
‡ Hoveden.
‖ Malmſb

" the then archbishop of Canterbury;
" but it is expressly said, that he had
" been thereto elected, *a principe clero*
" *& populo Walliæ*, i.e. by a Welch par-
" liament. And in the same reign one
" Gregory, an Irish abbot, was elected
" to the bishopric of Dublin, *a rege Hi-*
" *berniæ & clero & populo*, an Irish par-
" liament. So that the commons, at this
" time, were a constituent part of the
" Scottish, Welch, and Irish, parliaments,
" as well as with us in England.

" And in the year 1128 *, I find that
" famed scholar, Gilbertus Universalis, to
" be elected and consecrated bishop of
" London, *annuente clero & populo*. This
" seems a parliament at London.

" But this right of the commons, in
" electing bishops, does more clearly
" appear in Henry II.'s time, when all
" historians agree it to be a general cus-
" tom

* Vide Sax. Chr. sub An. 1127.

" tom both here and in France (and ſeems " founded on divers expreſs canons of the " primitive church.) Inſomuch, as Me- " zeray, in his hiſtory, aſſerts, that un- " til that time (i. e. the middle of the " 12th Century) *the voice of the people* " *in electing biſhops, was eſteemed the voice* " *of God.*"

Even the hiſtories, publiſhed by papal authority, bear ample teſtimony of the people's *right*, and the exerciſe of it in ancient times, though it has been long uſurped by that very authority. See *Italia Sacra*, (the Hiſtory of the *Italian Biſhops*, cited in the former tract,) vol. I. p. 1284. in the account of the biſhops of *Tarracina*; where it is expreſsly declared, that, on the death of *Avitus*, biſhop of *Tarracina*, " *St. Valentine was elected biſhop by* " *the* CLERGY *and* PEOPLE *of that city* *."

St.

* " *S. Valentinus Clari, et Flaviæ nobiliſſ. Tarracinenſium* " *filius, defuncto Avito, à* CLERO *et* POPULO *ejuſdem civi-* " *tatis epiſcopus electus,*" &c.

St. Valentine is ſaid to have ſuffered martyrdom about the year 362.

In the account of the archbiſhops of Florence, (vol. III. p. 12. of the ſaid work,) Zenobius, about the year 376, is ſaid to have been *elected*, not only *by the clergy*, but by ALL THE PEOPLE; which unanimity was eſteemed a *divine call*, not lawfully to be refuſed *. And, about the

* "*Non ſolum a clero, ſed etiam ab univerſo populo ſolemniter ad* PONTIFICATUS * *apicem eſt* ELECTUS. "*Nec vero licuit ei reniti, vel obſiſtere* ISTIUS MODI ELECTIONI, *quorum, ut præfatus ſum, ita* CONSENSU *et* ANNISU OMNIUM *ſuorum* CONCIVIUM *fuerat poſtulatus ad ejuſdem eccleſiæ gubernacula, ut palam daretur intelligi,* DIVINITUS *eum ad ejuſmodi fuiſſe officium invitatum.*"

* This expreſſion, "*pontificatus*" for *epiſcopatus*, is much more modern than the times to which it is here applied, though conſidered, perhaps, as a ſynonymous term by the compiler of this hiſtory; who, of courſe, may be ſuppoſed to expreſs himſelf in the *modern* language of his own times. There are many examples of the like groſs *miſapplication* of this word, and alſo of *pontifex* for *epiſcopus*, by eccleſiaſtical hiſtorians; but we are not therefore to conceive that they found theſe words, ſo applied, in the *ancient* records from which they compiled their hiſtories. For the word *pontifex* did not ſignify a *chriſtian biſhop*, the etymology of the word being deducible entirely *from a groſs* PAGAN *ceremony*, (as I have already ſhewn in p. 64.) *peculiar to* ROME *itſelf*, and applicable to none but *the pagan augurs of* ROME, until the *Roman emperors* of the *Weſtern branch* uſurped the title of PONTIFEX MAXIMUS,

year of Chriſt 443, Silvianus, an African, was *elected* biſhop of Tarracina, "*a clero* "*et populo,*" (tom. I. p. 1290.) But the language, reſpecting the appointment of the biſhops of Tarracina, was totally different in the very next century; nay, even under their *Saint Gregory* or *Pope Gregory* THE GREAT, the papal uſurpation, on the rights both of *clergy* and *people*, was become ſhamefully notorious! for we read of *biſhops* taking the charge of the church of Tarracina, "*ex imperio* MAGNI GREGORII," "*by the command of* "GREAT GREGORY!" GREAT *Gregory*, indeed he might well be called; for the popes having, then lately *, revived the *imperial* title of "PONTIFEX MAXI-"MUS,"

* See p. 65.

MUS, for political purpoſes; and, whilſt they continued in power to maintain it, (which they did at leaſt to the death of Valentinian III. A. C. 455, if not to the time of *Auguſtulus*, when the Weſtern branch of the Roman empire was entirely aboliſhed by Odoacer, in the year 477,) no biſhop could either have the power, or even an *inducement* to aſſume the title of *pontifex*, until the *imperial head*, to which it was inſeparably annexed, became, "*as it were, wounded to death,*" nor until the time was come, that this "*deadly wound*" was to be "*healed*;" and woe be to that *biſhop* who firſt diſgraced his function by that *fatal mark!*

" MUS," were become ſuitably *great* and *imperious* in their language; ſo that, notwithſtanding the *counter-title* of " *ſer-* " *vus ſervorum Dei*," which Gregory had hypocritally aſſumed, as a cloak of humility, to cover the pride of the former title, yet in his *imperious* language, he ſufficiently manifeſted the character of the " *little horn*," foretold by Daniel, (ch. vii. 8.) in *which* " *were eyes, like the* " *eyes of a man*," (i. e. the horn was to be a *biſhop*, or rather a ſucceſſion of *biſhops*, who are properly *ſee-ers*, or *over-ſeers*, viz. Επισκοποι, very aptly repreſented by " *the eyes of a man*," and " *a* " *mouth ſpeaking great things*." And, accordingly, we read of " Agnellus, bi- " ſhop of Funda," (or Fanda,) " who " *managed the church of Tarracina* ' *ex* " *imperio*,' *by the command of* GREAT " GREGORY *." And alſo, that " *Con-*

* " *Agnellus Fundanus, epiſcopus, Tarracinenſem eccleſiam* " *adminiſtravit*, EX IMPERIO MAGNI GREGORI," &c. (tom. I. p. 1291.)

" *ſtantius, biſhop of Palermo, had charge*
" *of the flock of Tarracina, 'ex imperio,' by*
" *the* COMMAND *of the ſame St. Gregory,*
" *the pontifex* *." Thus the popes began to elude the *election* of biſhops, by appointing other biſhops to take care of the vacant ſees: but they afterwards boldly took the *election*, even nominally, upon themſelves; which, before, they had uſurped indeed in effect, but did not ſo openly profeſs; and accordingly, in the very ſame page, we read of one *Ambroſius*, a MONK, being ELECTED biſhop of *Tarracina*, by pope Alexander II. in the year 1071; " *ab Alexandro* II. ELECTUS
" *fuit epiſcopus an.* 1071;" and alſo of one *Gregory*, another MONK, being *elected* † biſhop of *Tarracina* by pope Paſchal II.

The

* " *Conſtantius Panormitanus, epiſcopus, curam geſſit de*
" *grege Tarracinen.* EX IMPERIO *ejuſdem S. Gregorii pon-*
" *tif. uti palam fit ex lib. 7. epiſt. 14.*" (tom. I. p. 1291.)

† " *Gregorius* MONACHUS *Caſinenſis, a Paſchali* II.
" *pontifice* ELECTUS, *&c.*"

The popes obtained this abſolute dominion over *epiſcopal elections* by various arts and wiles and by gradual encroachments, craftily made, according to the circumſtances of the people they intended to deceive from time to time; and they always advanced in their demands after the admiſſion of every unjuſt claim; which demonſtrates the danger of ſwerving, in any reſpect, from primitive uſages. The *monkiſh clergy* in every part of the world, in proportion as the falſe notions of the ſanctity of *celibacy* advanced and prevailed, were regularly the inſtruments employed in thus *ſapping* the rights of *the clergy and people*. But the fathers at the council of Laodicea (which was as early as the year of Chriſt 365, or 367; according to biſhop Beveridge: See Dr. Cave's Hiſt. Eccleſ. p. 231.) did not proceed ſo *gradually* in ſapping the *rights* of the *people*, but boldly excluded them, at once, from all

all interference at *epiſcopal* elections, (ſee canon XII) and alſo from *the appointment of prieſts*, (ſee canon XIII.) which, however, as the learned patriarch of Antioch, Balſamon, has remarked, affords proof that "*not only* BISHOPS *were elected, in* "*ancient times, by* THE MULTITUDES," (or people,) "*but even the* PRIESTS *alſo* *."

The

* Και απο τθ παροντος κανονος παριςαται (ſays Balſamon) ὁτι ὁ μονοι επισκοποι το παλαιον εφηφιζοντο ὑπο των οχλων, αλλα και ιερεις, &c. That the *people* were allowed a ſhare in the election, even of their *prieſts*, as well as of their *biſhops*, appears alſo by a quotation which I find in the M.S. *notitia eccleſiaſtica*, of the learned Dr. Mangey before cited, viz. "Diſt. LXXVI. Can. *Quicunque* "*exinde jam acceſſu temporum* PRESBYTERIO *vel* EPIS-"COPATUI, *ſi eum* CLERI *et* PLEBIS *evocaverit* ELEC-"TIO, *ſocietur. Vide Anton. Aug. Epic. Juris Pont.* "*lib.* 3. *tit.* –4." (the figure preceding the 4 is blotted, and not legible,) "*et lib.* 4. *tit.* 18." And that it was an eſtabliſhed practice in Spain, for *the clergy* and *people*, of each city or diſtrict, to elect *prieſts*, appears by the 19th canon of the fourth council of Toledo. "*Sed nec* "*ille deinceps* SACERDOS *erit, quem nec* CLERUS, *nec* PO-"PULUS, *propriæ civitatis* ELEGERIT, *vel auctoritas* "*metropolitani vel comprovincialium ſacerdotum aſſenſio* "*exquiſierit*," &c. Concilium Toletanum IV. anno C. 633. Sacroſancta Concilia, tom. 5. Par. edit. 1671.

The *monkiſh* prelates in the ſecond council of *Arles*, at a much later period, (A. D. 452,) durſt not proceed ſo rapidly againſt the *peoples right of election*, though ſhamefully bold, at that time, in promoting "*the doctrines of dæmons*," by prohibiting marriage, or (in the words of ſcripture) "*forbidding to marry*." See the ſecond, third, fourth, and 43d, 44th, 45th, and 52d, canons of that council. But with reſpect to *epiſcopal elections*, they ſeem to have affected an imitation (though a very deluſive one) of the ancient mode of electing two or three perſons, (as deſcribed in a note of a former tract, p. 88-90.) and they thought themſelves obliged ſtill to acknowledge that the people were intitled to ſome ſhare in the election; which, however, they reduced to as ſmall a proportion as they could venture to do at that time, and craftily ſtated it in a moſt precarious light, to leave room for farther

innovation;

innovation; viz. that "THREE PERSONS "*ſhould be nominated by the biſhops*, (i. e. inſtead of the *people*, as before,) "*out of* "*which three perſons, the* CLERGY, OR "CITIZENS, *ſhould have power to elect* "ONE *." The word VEL is artfully inſerted, inſtead of the copulative ET, between the words CLERICI and CIVES, that the *acknowledged right* of the CITIZENS, might be occaſionally ſuppreſſed, whenever the temper of the times would permit. The ſame crafty inſertion of *vel* for *et* † may be ſeen in the ſeventh canon of

* "*Placuit*," (thus like *popes* and *kings* they manifeſted their "*will and pleaſure*" againſt *right*,) "*in or-* "*dinatione epiſcopi, hunc ordinem cuſtodire, ut primo loco* "*venalitate vel ambitione ſubmota* TRES *ab epiſcopis nomi-* "*nentur, de quibus* CLERICI VEL CIVES *erga unum eli-* "*gendi habeant poteſtatem.*" Concilium Arelatenſe II. can. 54. Howel's Synop. Can. p. 202. Theſe are farther proofs of the "*deceivableneſs* of *unrighteouſneſs.*" (mentioned in p. 72–75.) by which the *monaſtic* clergy rendered themſelves too generally the notorious inſtruments of "*the man of ſin!*"

† "*Metropolitanus epiſcopus a comprovincialibus epiſco-* "*pis, clericis* VEL *populis electus*," &c. Howel's Synop. can. p. 241.

of the ſecond council of Orleans, (concilium Aurelianenſe ii. A.D. 533.) where it is manifeſtly intended as a preparatory ſtep to the ſuppreſſion of the *people*'s ſhare in *the election*.

The like *monkiſh* craft appears alſo in the third canon of the third council of *Orleans* *, A.D. 538. But, though this deceitful mode of innovation could paſs at *Arles* and *Orleans*, yet it was too groſs to be admitted in the capital of France at a ſtill *later period*; for, even ſo late as the third council of Paris, A. D. 557, we find the right of the *clergy and people* to elect biſhops (expreſsly, "*juxta antiquam* "*conſuetudinem*," &c.) publicly aſſerted and eſtabliſhed; and even the *royal interference*, or MANDATE, moſt carefully, and in *expreſs terms*, PROHIBITED †. But

* "*De comprovincialibus vero ordinandis, cum conſenſu* "*metropoliti cleri* VEL *civium*," &c. (Ibid. p. 245.)

† See Sacroſancta Conſilia, *tom.* 5. *p.* 814. *Paris edit.* 1671. "Conſilium Pariſienſe III. circa annum "Chriſti

the grand enemy to *law* and *right*, ὁ ἀνομος, the PAPAL POWER, found means, at length,

" Chriſti DLVII. Pelagii Papæ III. Childeberti Regis " XLVI. C.VIII."—"Et quia in aliquibus rebus *con-* " *ſuetudo priſca* negligitur ac decreta canonum violan- " tur, placuit ut *juxta antiquam conſuetudinem* canonum " decreta ſerventur. Nullus, *civibus invitis*, ordinetur " epiſcopus, niſi quem *populi* et *clericorum electio* pleniſ- " ſima quæſierit voluntate. NON PRINCIPIS IMPE- " RIO, neque per quamlibet conditionem contra metro- " polis voluntatem, vel Epiſcoporum comprovincialium, " ingeratur. Quod ſi PER ORDINATIONEM REGIAM " honoris iſtius culmen pervadere aliquis nimia teme- " ritate præſumpſerit, a comprovincialibus loci ipſius " Epiſcopus recipi nullatenus mereatur, quem indebitè " ordinatum agnoſcunt. Si quis de Comprovincialibus " recipere contra interdicta præſumpſerit, ſit a fratribus " omnibus ſegregatus, et ab ipſorum omnium caritate " ſemotus," &c. " And becauſe, in ſome things, " the *ancient uſage* is neglected, and the decrees of the " canons are violated, it pleaſed," *(the aſſembly to or-* " *dain,)* " that the decrees of the canons ſhould be ob- " ſerved, according to *ancient uſage*, no perſon, con- " trary to the will of" (any) " citizens, ſhall be ordain- " ed biſhop, except him whom *the election of the people* " *and clergy* ſhall have required by the moſt ample de- " ſire," *(by the moſt manifeſt majority in ſentiment.)* " Let " not any biſhop be brought in by the command of the " prince," *(or king,)* " nor through any condition" " (or *terms)* " whatſoever, againſt the will of the me- " tropolitan or of the con-provincial biſhops. But " if,

length to *diſpenſe* with this juſt Pariſian *law*; for, pope *Zacharias*, the ſame that abſolved *Pepin* from his oath of allegiance to king Childeric III. thought proper alſo, in the *plenitude of his diſpenſing power*, " *to* INDULGE *king Pepin, that he might* " NOMINATE *biſhops to be ordained* " *throughout the kingdom of France, as* " *any ſees ſhould become vacant* *."

" if, *by royal appointment*, any biſhop, with too much " raſhneſs, ſhall preſume to paſs through" (or attain) " the ſummit of this honour, he by no means deſerves " to be received by the con-provincial biſhops of that " province, whom they know to be *unduly* appointed. " If any one of the con-provincial biſhops ſhall preſume " to receive him, contrary to" (theſe) " prohibitions, " let him be ſevered from all the brethren, and remo- " ved from the eſteem of all of them," &c. Which is clearly the penalty of *excommunication* decreed againſt any biſhop that ſhall preſume to acknowledge the authority of any *royal appointment* to the dignity of a biſhop: and they had it in their power to render ſuch appointments null and void, by refuſing *the eſſential* introduction to the office; the giving an *epiſcopal commiſſion*, by laying on of hands and previous prayer.

* See Italia Sacra, tom. I. p. 19. " *Hic pontifex*," (ſpeaking of *Sanctus Zacharias*, a Benedictine *monk* made

The danger of *regal influence, in epiſcopal elections*, had been early foreſeen and carefully guarded againſt, not only by *the council of Paris*, (laſt cited,) but alſo by the *primitive church* *, and thereby the

made pope, A. D. 741.) "*Pipino regi Francorum* INDULSIT, *ut per Galliæ regnum in epiſcopos ordinandos, ubi ſedes vacaſſet aliqua,* NOMINARET."

* The peculiar care and caution of the *primitive church*, to preſerve *epiſcopal elections* from *undue influence*, is worthy to be remarked, becauſe it demonſtrates the exiſtence and pre-eminence of the *epiſcopal order* in the church, (clearly diſtinct and ſuperior in office and degree to the *order of preſbytery*,) from the apoſtolic times: and, though *all biſhops* muſt certainly be *preſbyters*, yet the conſtant re-ordination of every *preſbyter* after being *elected* or nominated to the office of a biſhop (by the ſame eſſential rites of ſolemn prayer for the guidance and aſſiſtance of the Holy Spirit, with the impoſition of hands) demonſtrates, that preſbyters, though really *paſtors*, and, in ſome reſpect, *overſeers* of diſtinct *flocks* or congregations of chriſtians, yet were not properly *biſhops* (επισκοποι) in the *primitive* eccleſiaſtical ſenſe, until admitted to that dignity by the renewal of their ſacred orders with the expreſs *deſignation* to the *epiſcopal* function: for the *eſſential rights* of *ordination* (prayer for the Holy Spirit and laying on of hands) are the ſame, for all the three degrees of the chriſtian miniſtry, differing only in the *deſignation* to their reſpective duties of deacons, preſbyters, and biſhops.

the wickedneſs of this *lawleſs* pope, and his INDULGENCE to K. Pepin, is rendered the more conſpicuous! The learned biſhop Beveridge gives a decided opinion that the 30th canon of the ancient codex, which he calls "*codex canonum primitivæ* "*eccleſiæ*," was neceſſarily ordained, "*leſt any perſon, by money or* MEANS OF "SECULAR POWERS, *ſhould be promoted,* "*but* ONLY *by the free election of* THE "CLERGY *and* PEOPLE *." But no comment can be more clear and decided, than the canon itſelf in guarding againſt the *interference of princes*, viz. "*if any* "BISHOP, *having availed himſelf*" (of the power or influence) "*of* WORLDLY "PRINCES, *ſhall through them have ob-* "*tained authority over a church, let him* "*be depoſed and ſeparated*," (or excommunicated,)

* "*Ne quis pecuniâ, aut* SECULARIUM POTESTATUM, "*ope*, ſed LIBERA TANTUM CLERI POPULIQUE ELEC- "TIONE *promoveatur*." See his "Codex Canonum "Eccleſiæ primitivæ vindicatus," &c. p. 209.

municated,) "*and alſo all thoſe that com-*
"*municate*" (or have fellowſhip) "*with*
"*him**." The council of Paris, before cited, ſeems to have copied the ſpirit of this law. Thus the moſt jealous republicans may be convinced that *epiſcopacy* has *no neceſſary* connection with *monarchy*; but, on the contrary, is an inſtitution which *ought to be entirely independent* of it; *independent*, I mean, with reſpect only to NOMINATION or *election* to the dignity: ſo that *royal mandates* and *letters miſſive*, with the "*congé d'elire*," are by no means founded in *right*, but are only *modern encroachments* promoted by *popes* and *monks* when they *were unable to monopolize* the power of *election* to *themſelves*; for they would rather throw the *nomination* into the power and *will* of *arbitrary princes*

* Ει τις επισκοπος ΚΟΣΜΙΚΟΙΣ ΑΡΧΟΥΣΙ χρησαμενος, δι αυτων εγκρατης εκκλεσιας γενηται, καθαιρεισθω και αφοριζεσθω, και οι κοινωνουντες αυτω απαντες. See biſhop Beveridge's "*Codex Canonum Primitivæ Eccleſiæ*," can. 30. p. 442.

princes than ſee it *lawfully* exerciſed by the *clergy* and *people*; provided their *partial* favour towards *royalty* were admitted as an "INDULGENCE" from their own *plenitude of power!* But, though king Pepin was baſe enough to avail himſelf of the preſumptuous and wicked encroachment of pope Zachary on the people's rights, yet his ſon and grandſon were more honourable than their anceſtor, and, inſtead of baſely accepting this moſt unjuſt *papal indulgence*, on the contrary aſſerted the *popular right* to elect biſhops in the plaineſt and moſt unequivocal terms, and nobly and *diſintereſtedly* reſcued it from the uſurpations of the *monkiſh* clergy, which had almoſt univerſally prevailed for ſome time before. For, the emperor CHARLES THE GREAT moſt nobly ordained, "*That* "*biſhops ſhould be choſen according to the* "*ſtatutes of the canons, by the* ELECTION "OF THE CLERGY AND PEOPLE *of the* "*proper*

" *proper dioceſe* *." And the emperor Lewis *the Good*, or *Ludovicus Pius*, alſo aſſerted the ſame juſt *rights* of the *clergy* and *people*: " *Let a biſhop be elected by the* " CLERGY *and* PEOPLE *of the proper* " *dioceſs, without reſpect of perſons, or* " *bribes*," (but) " *on account of worthi-* " *neſs of life and gift of wiſdom* †."

Theſe excellent laws would probably have continued in force much longer than they did, if they had been obſerved with the primitive precautions ſtated in a former note, viz. to elect *two*, and afterwards to decide by *lot*; becauſe this ancient mode of *exerciſing the joint elective rights*

* See Capitularia Caroli Magni, lib. i. 83. " *Ut epiſ-* " *copi* PER ELECTIONEM CLERI *et* POPULI *ſecundum* " *ſtatuta canonum de propria dioceſi elegantur.*"

† See *Capitularia Ludovici Pii*, which are annexed to the canons of the third council of Aix, (" Concilium " Aquiſgranenſe III. A. D. 816. ſub Ludovico Pio ce- " lebratum," cap. 2.) " *Epiſcopus per* CLERUM *et* PO- " PULUM *eligatur, de propria diœceſi abſque perſonarum* " *et munerum acceptione, ob vitæ meritum et ſapientiæ do-* " *num.*" (Howel's Synop. Can. p. 407.)

rights of CLERGY *and* PEOPLE is ſo ſafe and perfectly unexceptionable, that it muſt have obviated the plauſible objection that was uſually alleged, by popes and monks, againſt POPULAR elections; i.e. the danger of exciting *party animoſities* and *tumults*. The monks, however, were not able entirely to ſet aſide theſe excellent conſtitutions of Charles and Lewis for ſeveral years afterwards; and the influence of them ſeems to have extended even to *Rome* itſelf: for the biſhops at a *lateran council*, not leſs than 45 years afterwards, (viz. A. D. 861.) aſſerted the *rights of the clergy and people*; and even the pope himſelf, (Nicolas I.) concurred! the more willingly perhaps, becauſe the general purpoſe of the canons, then made, was to curb the extravagance of a *rival* metropolitan, John VIII. archbiſhop of *Ravenna*, whoſe province was intituled *Æmilia*. The very firſt canon was to reſtrain the archbiſhop *from conſe-*

crating biſhops throughout (the province of) *Æmilia, except after* THE ELECTION OF THE CLERGY AND PEOPLE; a teſtimony highly to the point in queſtion, and the more eſpecially, if we conſider that it proceeded from a quarter, the ſeat of uſurpation, that had long been inimical to all *popular* rights! See "caput primum,"—"*Epiſcopos per* ÆMILIAM "*non conſacres, niſi poſt electionem* CLERI "*et* POPULI," (Italia Sacra, tom. 2. p. 347.) This canon would have done more honour, however, to the *lateran council*, and pope Nicolas, had it extended to epiſcopal elections in *general*, inſtead of being *confined* to the province of *Æmilia*. The archbiſhop of Æmilia had probably encroached on the elective rights of the *clergy and people* of his province; but this alone could not have been conſidered, at *Rome*, as a *crime*, (it having been the regular practice of the popes themſelves,) had

had he not at the ſame time, profeſſed *independence of the Roman ſee:* and the Pontif, though probably, like his predeceſſors, a natural enemy to the *elective rights* of the *clergy and people*, was content, it ſeems, to acknowledge them, whilſt the reformation tended to reduce the pretenſions of his *rival:* and indeed he gained a complete conqueſt over him, by means of this lateran council, wherein he reduced him to the pitiful dilemma of accepting a continuance of his preferment on the moſt humiliating terms of ſubmiſſion to the *Roman See*, (which was by no means due from a *metropolitan* biſhop,) and compelled him baſely and diſhoneſtly to yield up the juſt rights and *independence* of his province to the encroaching juriſdiction of the papal power.

A very few years afterwards, (about the year 877,) pope John VIII. (or rather

John IX. as he is ſtiled by *Platina**) openly availed himſelf of this newly-acquired

* Many *ancient* writers of good repute repreſent pope *John* VIII. to have been a *woman*; and ſome of them add, that he was even an *Engliſh woman!* It is *therefore* to avoid the throwing any farther unneceſſary blame on our reputed *countrywoman*, that I ſay, "*rather* John IX." than John VIII. becauſe the times I ſpeak of were about the quarter part of a century later than the period uſually aſſigned for the *infallible* dominion of our extraordinary *Engliſh* pope. Of late, indeed, it has been a ſort of *faſhion* amongſt *proteſtant* writers, as well as *papiſts*, to deem the ſtory of *pope Joan* a mere *fable:* thus much, however, is certain, that, if it be a *fable*, it was not invented by the *proteſtants*. Accounts of it were written by undoubted catholics, ſome *centuries* before the reformation, and theſe accounts were *even printed* ſeveral years before either Luther or Calvin were preachers. *Martin* (the author quoted for it by *Platina)* was a dominican frier, *apoſtolic* chaplain under pope Nicolas III. A. D. 1277; and was afterwards a *popiſh archbiſhop* in Poland; ſo that, from his ſituation and rank in life, it was neither probable that he ſhould want the beſt information on that ſubject, which the times he lived in could afford, nor that he ſhould adopt ſuch a ſtory, had it not been *current* and *generally admitted* at that time. *Platina*, who quotes him, was employed by pope *Sixtus* IV. to write the *Hiſtory of the Popes*; and would not ſurely have quoted this ſtory from *Martin* if he had thought that it might *with propriety* have been abſolutely rejected; but, on the contrary, he is ſo far from making *Martin* alone anſwerable for the ſtory, that he declares

quired extenſion of power, by *oſtentatiouſly* ſubmitting the *archbiſhops of Ravenna*, (together

declares it to be the *common report*; "*Hæc quæ dixi* VULGO "FERUNTUR," *commonly reported*, it ſeems, by *ſeveral authors*; whom he is pleaſed, however, to deem *uncertain* and *obſcure*, ("*incertis tamen et obſcuris auctoribus*,") though he had no right to include *Martin* in this vague cenſure. In the very next ſentence, however, he entirely exculpates him (as well as his *obſcure authors*) from the invention of the ſtory, by adding, that it was "*what* "*almoſt all affirm*," "*quod fere omnes affirmant*," ſee p. 57. a. This was *printed* at Venice in 1504. *Werneris Rollwinck*, who, in his "*Faſciculus Temporum*," relates the ſtory without expreſſing the leaſt doubt about the truth of it, was a *Carthuſian frier*; ſo that he was as little likely, as the two former writers, to publiſh this account through any pique or prejudice againſt the *papacy*. *Rollwink* has alſo added, that this *John* "*was* "*the ſixth pope who had the name of ſanctity, without the* "*thing itſelf*; *and, like others, was alſo ſmitten of God,* "*and not placed in the catalogue of pontiffs.*" "Et hic "*ſextus* videtur fuiſſe PAPA, qui nomen ſanctitatis ſine "re habuit uſque huc, et ſimiliter ſicut alii a Deo pla"gatus fuit, neç ponitur in catalogo Pontificum." See p. 66. b. This was *printed* in the year 1488. In the chronicle of *Sigebert*, the ſtory is related as a *current report*, i. e. *fama*,—"*Fama eſt hunc Joannem fœminam fuiſſe*," &c. This author was a *Benedictine monk*, about the year 1100, and his work was printed by *H. Stephens*, the *French king's printer*, at Paris, in 1513; ſo that there is no reaſon to ſuſpect either the author or the printer of *partiality* againſt *popery*. Of all theſe different authors, except

(together with the archbiſhops alſo of *Milan*,) againſt all probability of *right* or *ſeemlineſs*, to the juriſdiction of the *biſhops* of *Pavia*, or more properly *Papia*; a very *ominous*

except the *firſt*, (*Martin*,) I have the printed copies before me of the ſeveral dates abovementioned. Many other authors I find quoted for the ſtory, who were alſo profeſſed *Roman Catholics*; as *Marianus Scotus*, a *monk* at Mentz, who wrote a *chronicle* about the year 1069, the chronicle alſo of *Petrarque*, printed at *Florence* in 1478. That of *Antoninus*, who was *archbiſhop* of *Florence*, and died A. D. 1459, that of the *abbé Trithemius*, and alſo the commentaries of *Raphael Volatteranus*, dedicated to pope *Julius* II. &c. &c. &c. and all *before* the *proteſtant* times. So that the *fable*, if it be one, muſt not be attributed to *proteſtants*; but we cannot ſay ſo much for the *oppoſition* that has been made to it; for the *proteſtants* may certainly be ſaid to have *innocently* occaſioned it, though they cannot juſtly be anſwerable for the futility of the far-fetched arguments and pretences that have been raked together by learned *Jeſuits* for that purpoſe. The advancement of the *reformation* rendered it neceſſary, indeed, for the honour of the *eternal city*, to patch up and plaſter over the *incurable* ſores and blains of the papal pretenders to *infallibility*; but, after all the pains that have been taken, the reaſons, or rather excuſes, alleged for the firſt introduction of the *perforated chair*, (the famous "*ſedes ſtercoraria*," ſee Platina, p. 57.) are ſo frivolous and unſatisfactory, that they ſeem much more improbable and *fabulous* than the plain *fable* itſelf, (as they preſume to call it,) which *moſt naturally* accounts for the abſurdity!

ominous appellation, derived, as even my popiſh author admits, (ſee *Italia Sacra*, tom. I. p. 1075.) from the *Latin* interjection PAPE! *O wonderful*, or *O ſtrange!* The Pontif, however, thought himſelf obliged to admit, at the ſame time, the *elective rights* of the *clergy and people of* PAVIA, probably the better to ſecure, from examination and oppoſition, the uſurped authority of the "*privilegium*," (as he called it,) whereby he exalted the *biſhops of Papia*, above their brethren, the independent metropolitans of *Ravenna* and *Milan*. This "*privilegium*" would not have been mentioned by me, had it not contained an expreſs teſtimony * to the *popular right* of election. And the author of *Italia Sacra*, ſpeaking farther of

* "—Decernimus, ut, ſi humana *contradictione*" (probably for *conditione*) "tuæ ſedis epiſcopus ex hoc mundo "migraverit, *de proprio clero quem idoneum præ cæteris* "CLERUS *et* POPULUS *reperierit, poteſtatem habeant* ſe"cundum ſtatuta venerabilium patrum, et Romanæ "ſedis antiſtitum, nulla ſeculari contradicente poten"tiâ, *eligendi epiſcopum*." Italia Sacra, tom. I. p. 1036.

of this Pope *John*, and Biſhop *John*, relates, that the latter obtained theſe and alſo *other privileges* in a council held at *Papia* by Pope *John*; but theſe, it ſeems, were the chief, as being the only *privileges* he has particularized; "*In quo*" (conſilio) "*ab eodem* PONTIFICE ALIA "*obtinuit* PRIVILIGIA, *ac præcipue, ut* "POPULO, CLEROQUE *Papienſi* SUUM "EPISCOPUM ELIGENDI JUS ESSET, "*eidemque conceſſit, ut quoties Mediolanen-* "*ſem*, ac *Ravennatenſem archiepiſcopos* "*cum ſuis ſuffraganeis ad ſynodum vocaret*, "*accederent*," &c. Italia Sacra, tom. I. p. 1087.

About ſeven or eight years before this time, viz. A. D. 869 or 870, the 36th council of Conſtantinople (intituled, by the popiſh or Latin party, the eighth general council) wickedly declared againſt the *unalienable popular right* of electing Biſhops, and formed a canon expreſsly againſt

againſt it. Pope John therefore, on the laſt-mentioned occaſion, might have (beſides his partiality to the biſhop of *Papia*) a ſtill farther inducement for re-eſtabliſhing the *clergy* and *people* of *Papia* in their juſt *right of* election, viz. to demonſtrate the *plenitude of his power in diſpenſing with laws*; becauſe, whatever tends to aggrandize the papal juriſdiction may ſometimes afford an ample reaſon even for a *Pontif* to do *right!* The ſame reaſon, probably, may be aſſigned for the continuance of *popular* elections, even at Rome itſelf, long after the ſaid decree of the general council againſt them; for pope Adrian III. in the year 895, was "*ſo bold*," ("*tanti animi fuit*," ſays Platina,) in behalf of this juſt *right*, that he announced it to the ſenate and people, viz. that, "*in creating a pope, the authority of the* "*emperor ſhould not be waited for; and* "*that the ſuffrages of* THE CLERGY *and*

" PEOPLE *ſhould be free* *." And he adds, that " *this inſtitution was rather attempt-* " *ed than begun by pope Nicolas* I." But this, however, was not the caſe; for even he himſelf relates in his accounts of pope Nicolas, on the preceding page, not only that the *clergy* and *people* did really elect without waiting for the *imperial will*, but alſo, that letters were afterwards *received from the emperor Lewis* (II.) " *in which he highly commended the* " *Romans, that they had knowingly and* " *wholly created their own chief pontif,* " *without waiting for the wiſh of others,* " *who, perhaps, in that buſineſs, through* " *the*

* " Adrianus III. patria Romanus: patre Benedicto: " *tanti animi fuit:* ut initio pontificatus ſui ſtatim ad " ſenatum populumque retul-rit: anno Domini 895: " ne in creando pontifice imperatoris auctoritas expec- " taretur: utque *libera* eſſent et *cleri* et *populi* ſuffragia: " quod quidem inſtitutum a Nicolao primo tentatum " potiuſquam inchoatum diximus." But mark the leading cauſe of Adrian's *boldneſs*; " Illectum credo hac " opportunitate Adrianum: quòd Karolus Imperator ab " Italia eum exercitu diſcedens: in Normannos rebel- " lantes moverat."

" *the want of perſonal knowledge, might* " *have had leſs judgement* *."

It is manifeſt, therefore, that Platina was inclined to attribute the merit of promoting free *popular elections*, at Rome, rather to the *Pope* than to the *Emperor*, to whom it was more ſtrictly due, even according to his own evidence: for *Popes* and *Monks* could not endure a concurrent right of the *people* in epiſcopal elections, except when it might ſeem to *aggrandize* the holy ſee as a *peculiar privilege*; or unleſs it were admitted in any particular place by *papal* favour and *indulgence*, as at *Papia*, for the like purpoſe of *aggrandizement!* But in all other caſes they were the regular profeſſed enemies to *popular right*; ſo that to *their* influence, and not to the influence of imperial or royal pow-

 er,

* " Supervenere a Ludovico imperatore literæ: quibus Romanos admodum laudat: quod ſummum pontificem ſcientè et integrè creaſſent: non expectato aliorum voto: qui fortè ea in re ob ignorationem perſonarum minus judicii habuiſſent."

er, is the wicked *decree againſt free elections* to be attributed. And this was carried, it ſeems, on the ſtale pretence of probable *tumults*, and "*the confuſion that a mul-*
"*titude of electors might occaſion*," juſt as the preſent *tumults* in Weſtminſter afford, to the enemies of the Engliſh conſtitution, an exulting argument againſt the ancient *right* of *frequent elections*; who, inſtead of being willing to correct the *abuſe* of an inſtitution, would rather deſtroy the profitable *uſe* of it: but ſuch perverſe reaſoners are either *deplorably ignorant*, or elſe *ſhamefully wicked*: for the ſame argument holds equally good for *robbing* the people of their *pecuniary* property; becauſe many of them make a very improper uſe of what little money they have to ſpare; and indeed the robbery would be much *leſs diſhoneſt* and *ſinful* in the latter caſe than in the former; for, though both are *rights* of the people, and cannot therefore be infringed without

out *iniquity* and *injuſtice*, which are hateful in the ſight of God, yet the *right* of *election* (whether it be to *civil* or *eccleſiaſtical* offices) is *ineſtimable*, and above price; ſo that no plea of *expedience*, or even of "*neceſſity*," can juſtify the *groſs diſhoneſty* of infringing it. They might as well perſuade us to cut off our legs, leſt we ſhould ſtrain our ancles in walking! or abſolutely to prohibit *all* men from riding on horſeback, becauſe *ſome* men have had dangerous falls, and others have accidentally loſt their lives by it! yet ſuch arguments are not more *groſsly abſurd* than this pretence of *tumults* as a reaſon for robbing the people of their *election rights*; and yet *this abſurdity* prevailed in the 36th council of Conſtantinople, though the popular *right* was expreſsly allowed! "*On a longtemps conſervé* "*aux laics* LE DROIT *d'aſſiſter aux élec-* "*tions*," (ſays *Herycourt* in his *Analyſe*, p. 17.) "*et d'y donner leur ſuffrage. La*

"CON-

" CONFUSION QUE POUVOIT CAUSER " LA MULTITUDE DES ELECTEURS " *engagea à n'y admettre plus que la clergé.* " *On en fit un decret exprès dans la* VIII. " *concile général.*" [For ſo he ſtyles (but very improperly) the 36th council held at Conſtantinople in 869.] " *Ce changement* " *n'a point empêché que l'on ne fut obligé de* " *demander le conſentement des* SOVE- " REIGNS." And this obligation, to aſk the *conſent of ſovereigns*, *monkiſh prelates* were content to endure, (notwithſtanding that the interference of all *ſecular Princes* in epiſcopal elections is ſtrictly forbid by the canons of the primitive church, ſee p. 317.) provided they could but prevail on the *Monarchs* to join them in effecting an entire excluſion of the *people's right to elect.* However, neither the *monkiſh* nor the *monarchical* influence could entirely overcome the *popular right* in England, until many years afterwards, which I have already proved by ſeveral incon-

inconteſtible examples. But it was far otherwiſe in *France:* for, even in the ſame century, (the ninth,) the *Kings of France* (inſtead of maintaining equal juſtice between *the clergy and people*, like their predeceſſors Charles the Great, and Lewis I. and II.) now claimed to *themſelves the* NOMINATION of BISHOPS; of which I find a memorandum in the learned Dr. Mangey's *Notitia Eccleſiaſtica*, before cited, viz. "*It ſeems*" (ſays he) "*that in the ninth* "*century the kings of France claimed the* "NOMINATION *of Biſhops.*" And, if this *monarchical* uſurpation of the moſt eſſential *popular right* in the Chriſtian church was not actually promoted by the Roman "*myſtery of iniquity,*" (for I have already given an inſtance of Pope *Saint Zachariah*'s plenary *indulgence* to ſuch *diſhoneſty*, ſee p. 315.) it had, at leaſt afterwards, the *expreſs conſent* of the *Roman* court, provided that the *papal* ſhare of the unlawful plunder might be admitted with it: and

ac-

accordingly we read of "THE CON-
"CORDATE" (as formerly between the murderer *Herod* and *Pontius Pilate*, now alſo) "*between Pope Leo* X. *and K.*
"*Francis: The Pope* COLLATES *upon the*
"*King's* NOMINATION." This memo-
"randum I found in Dr. Mangey's *Notitia Eccleſiaſtica*, for which he cites *Herycourt*, lib. 1. c. 6. "*Le* CONCORDAT *fait*
"*entre Leon* X. *et François* I. *a transferé*
"*à nos Rois tout le* DROIT *des électeurs.*"
"The *concordate* made between Leo X.
"and K. Francis I. hath transferred to
"our Kings all the right of the electors."
This indiſcriminate writer could not perceive (or, if he did, he muſt be charged with a much worſe fault than *indiſcrimination*) that the DROIT *of the electors* could not be *transferred* by thoſe who had *no right* in it; and, conſequently, that the kings of France do not exerciſe a DROIT, but a TORT, as long as their unjuſt uſurpation of the DROIT continues;

nues; and I wiſh I could ſpeak more favourably of the *uſurpation of our elective rights* in England!

The rights of *epiſcopal* elections, as well as the nature of the *epiſcopal office* itſelf, have, indeed, been ſubjects of much controverſy in the Chriſtian church; and the ſeveral diſſentients, that have hitherto publiſhed their opinions, might long ago have approached much nearer to an agreement in the happy medium of truth, had they been endued with ſufficient *impartiality*; but this, alas! has been too much wanting on every ſide of the controverſy. The *epiſcopalians*, on the one hand, though they have, in general, well maintained and proved the nature and efficacy of the *epiſcopal* function, and the exerciſe of it *in every age of the church*, clearly diſtinct from the office of mere *preſbyters*, (demonſtrating that, though every *biſhop* muſt be *a preſbyter*, yet that every *preſbyter* moſt certainly *was not a*

 biſhop,)

biſhop,) nevertheleſs, on the point of *epiſcopal elections*, they have either been totally ſilent like the learned Archbiſhop Uſher *, in his excellent little tract, "*De*

"*epiſ-*

* Archbiſhop Uſher, however, in another uſeful work, not profeſſedly on the ſubject of Epiſcopacy, has nevertheleſs, in occaſional notes, produced ſeveral inſtances of *Biſhops elected by the* PEOPLE *as well as by the clergy*. See Veterum Epiſtolarum Hibernicarum Sylloge, viz. the 25th, 33d, 34th, 40th, and 41ſt, epiſtles, with the Archbiſhop's *remarks* upon them, together with his remarks on the 39th epiſtle; all which *remarks* will be found at the end of the book, under the title of "*Epiſtolarum Recenſio.*" The examples relate to the *free elections, by the clergy and people*, of the Biſhops of *Dublin* and *Waterford*, between the years of Chriſt 1074 and 1122, which Biſhops, as well as the Biſhops of *Limerick*, received, in thoſe times, their epiſcopal ordination, or conſecration, from the Archbiſhops of Canterbury, and *freely* acknowledged the juriſdiction of that ſee. The inhabitants of the ſaid Iriſh cities were colonies of *Normans*, who invaded Ireland and took poſſeſſion of thoſe parts under the command of *Rollo* and his two brothers, (according to an account cited by Archbiſhop Uſher, ibid. p. 163.) which was probably *before* his conqueſt and ſettlement in a part of France, about A. D. 912. Dublin, however, and the greateſt part of Ireland, was afterwards (viz. about A.D. 964.) conquered by our Anglo-Saxon King, Edgar, (as appears by his charter, of that year, "*De Oſwaldes law*," ib. p. 121.) a circumſtance not much noticed by hiſtorians,

" *epiſcoporum et metropolitanorum origine*," and Dr. *Cave*, in his learned and laborious

 " *Diſſertation*

rians, as the Archbiſhop remarks on the ſaid charter or diploma, p. 163. " *in quo*" (ſays he) " *quod omnes hiſtoriæ* " *tacent*, MAXIMAM PARTEM HIBERNIÆ CUM SUA " NOBILISSIMA CIVITATE DUBLINIA, ANGLORUM " REGNO SUBJUGATAM A SE FUISSE *confirmat*." But though our *Anglo-Saxon* government ſoon afterwards loſt their dominion in *Ireland*, with reſpect to temporal matters, yet theſe *Norman* colonies in *Ireland* long afterwards freely acknowledged, and endeavoured, of their own accord, to maintain, an eccleſiaſtical juriſdiction of the archbiſhops of Canterbury over their *own elected* Biſhops; by regularly applying to Archbiſhop Lanfranck, and ſome of his ſucceſſors, archbiſhops of Canterbury, to conſecrate their elected Biſhops. And the *clergy* and *people* of *Dublin*, in one of theſe epiſtles, (viz. to Radulph, Archbiſhop of Canterbury, A. D. 1121.) ſay, " *We have always willingly ſubmitted* OURS" (i. e. our Biſhops) " *to the* GOVERNMENT OF YOUR PREDE- " CESSORS, *from which we remember that* OURS *received* " *eccleſiaſtical dignity**." But, whether the ſubmiſſion of theſe Iriſh ſees to the province of Canterbury commenced only after the eſtabliſhment of the *Normans* in *England*, is not certain: though it is moſt probable that the cuſtom might have been founded on a more ancient connection of thoſe cities with the province of Canterbury under the Anglo-Saxon conquerors; eſpecially as the burgeſſes and clergy of Dublin, in their letter, dated A. D. 1121, laſt cited, aſſert that *their voluntary ſubmiſſion* to

* " *Anteceſſorum enim veſtrorum magiſterio ſemper* NOSTROS LIBEN- " TER SUBDIMUS, *a quo recordamur noſtros accepiſſe dignitatem eccle-* " *ſiaſticam*." P. 100.

" *Diſſertation concerning the government*
" *of the* ANCIENT CHURCH *by Bi-*
" *ſhops,*

to that ſee had " *been preſerved a long time,*" " *multo*
" *tempore*;" for they warn * the Archbiſhop of Canterbury, that " *the Biſhops of Ireland have great zeal (ſay*
" *they, or wrath) againſt us, and chiefly the Biſhop that*
" *dwells at Armagh, becauſe we are unwilling to obey*
" *their ordination, but we are always deſirous to be under*
" *your government, and therefore we requeſt your ſuffrages,*
" *ſo far that you may advance* GREGORY" (whom they call, in the former part of the epiſtle " NOSTRUM
" ELECTUM") " *to the ſacred order of epiſcopacy, if you*
" *ſhall be willing, any longer, to retain that ſee, which,*
" *for* A LONG TIME," (" multo tempore,") " *we have*
" *preſerved to you*" Epiſt. 40. p. 100. The 25th epiſtle, An. 1074, is from " the *clergy and people of the*
" *church of Dublin*" to Lanfranck, Metropolitan of Canterbury; in the addreſs of which, they tender their
" *debitam ſubjectionem* †." They inform him that " *the*
" *church*

* " Sciatis vos revera, quod Epiſcopi *Hiberniæ* maximum zelum
" e ga nos habent, et maximè ille Epiſcopus qui habitat *Ardimachæ*;
" quia nos nolumus obedire eorum ordinationi, ſed ſemper ſub veſtro
" dominio eſſe volumus. Idcircò veſtra ſuffragia ſupplices petimus,
" quatenus *Gregorium* ad ſacrum ordinem Epiſcopatus promoveatis;
" ſi ampliùs illam parochiam, quam MULTO TEMPORE vobis ſerva-
" vimus, retinere volueritis. Vale."

† See p. 68. " Venerando ſanctæ Cantuarienſis eccleſiæ metropo-
" litano Lanfranco, clerus et populus eccleſiæ Dublinenſis debitam
" ſubjectionem.

" Veſtræ Paternitati eſt cognitum; quòd eccleſia *Dublinenſis* (quæ
" *Hiberniæ* inſulæ metropolis eſt) ſuo ſit viduata paſtore, ac deſtituta
" rectore. Propterea eligimus Preſbyterum, nomine *Patricium*, nobis
" ſufficientiſſimè cognitum, natalibus et moribus nobilem, Apoſtolicâ
" &

" *ſhops, Metropolitans, and Patriarchs,*" or elſe have expreſſed a great degree of prejudice

" *church of Dublin is widowed of its Paſtor, and deſtitute* " *of a Ruler, therefore* WE" (ſay the clergy and people) " HAVE ELECTED A PRESBYTER, *by name,* PATRICK, " *to us very ſufficiently known, noble in birth and morals,* " *&c. whom we requeſt, as ſoon as may be, to be ordained* " *our biſhop,*" *&c.*

The 33d epiſtle, A.C. 1095, p. 89. is from Anſelm, Archbiſhop of Canterbury, to the Biſhops of Ireland, informing them, that, on the death of his predeceſſor, Archbiſhop Lanfranc, the King, the Biſhops, and the great men, of the kingdom had dragged him violently to the epiſcopal chair, *the clergy and people* calling out for the ſame purpoſe *. This ſeems to have been *an election by the parliament*, like many other examples about that time, viz. by *the King, the Biſhops, the Lords of the kingdom, the clergy, and people*; and, therefore, though it affords evidence of the *popular right* to elect, yet

" & Eccleſiaſticâ diſciplinâ imbutum, fide Catholicum, in ſcripturarum " ſenſibus cautum, in dogmatibus eccleſiaſticis exercitatum. Quem " nobis quantocius petimus ordinari epiſcopum: quatenus, auctore Deo, " regulariter nobis præeſſe valeat et prodeſſe; et nos ſub ejus regimine " ſalubriter militare poſſumus. Quia integritas præſidentium ſalus eſt " ſubditorum: et ubi eſt incolumitas obedientiæ, ibi ſana eſt forma " doctrinæ."

* ——" Defuncto beatæ memoriæ prædeceſſore meo *Lanfranco* Ar- " chiepiſcopo, cum in Normanniâ *Beccenſis* monaſterii abbas extitiſſem, " (unde et præfatus anteceſſor meus ad regendam eccleſiam, cui Deo " auctore præſideo, ante me proceſſerat,) occulto Dei judicio, pro utili- " tatibus eccleſiaſticis in Angliam veni. Quò venientem tam Rex " quàm pontifices regnique optimatos, ad cathedram pontificalem, non " vocando, non rogando, (ut fieri aſſolet,) immo violenter rapiendo " pertrahunt: clero et populo acclamantibus in id ipſum; ut nec unus " cui quod gerebatur diſpliceret, viſus fuerit intereſſe." (P. 90.)

prejudice against all ancient teſtimonies, which tend to juſtify any claim of *popular* or

yet it is not a proper example for imitation in epiſcopal elections, which ſhould be made only by *the clergy and people of each particular dioceſe*, according to the ancient canons and practice of the primitive church.

The 34th epiſtle, A. C. 1099, p. 92, is from "*the* "*clergy and people of the town of Waterford, with King* "*Murchertag and Biſhop Donald*," to Archbiſhop Anſelm, wherein they ſay *, "*We and our King Murchertach, and* "*Biſhop Donald, and Dermeth, our Duke, brother of the* "*King, have* ELECTED THIS PRESBYTER, MALCHUS, "*the monk of Walchelin, Biſhop of Wincheſter*, to us very "ſufficiently known, &c. *him we requeſt to be ordained* "*our Biſhop* by your paternity, &c."

The 41ſt epiſtle (in p. 101.) is from Henry I. K. of England, to Radulph, Archbiſhop of Canterbury, as follows †, "*the King of* IRELAND *hath informed me by* "*his brief, and the Burgeſſes of* DUBLIN, *that* THEY "HAVE ELECTED *this* GREGORY," [who was probably the

* —"Nos et Rex noſter *Murchertachus*, et Epiſcopus *Domnaldus*, "et *Dermeth* Dux noſter, frater Regis, ELEGIMUS HUNC PRESBYTE-"RUM *Malchum*, *Walchelini* Wintonienſis epiſcopi monachum, nobis "ſufficientiſſimè cognitum, &c. &c. Hunc nobis petimus a veſtrâ "paternitate ordinari pontificum: quatenus regulariter nobis præeſſe "valeat et prodeſſe, et nos ſub ejus regimine ſalubriter Domino mili-"tare poſſimus," &c.

† "Henricus, Rex Angliæ, Radulpho Cantuarienſi Archiepiſcopo "ſalutem.

"Mandavit mihi Rex *Hiberniæ* per breve ſuum, et Burgenſes *Dub-*"*linæ*, quod elegerunt hunc *Gregorium* in epiſcopum, et eum tibi mit-"tunt conſecrandum. Unde tibi mando, ut, petitioni eorum ſatisfa-"ciens, ejus conſecrationem ſine dilatione expleat. Teſte Ranulpho "Cancellario apud Windelſor." P. 101.

or *congregational right* in the choice of *Biſhops*; and zealouſly oppoſing thereto a multitude

the bearer of the King's letter as well as of the former (N° 40.) from the *burgeſſes and clergy* of Dublin,] "*and* "*ſend him to thee to be conſecrated, wherefore I command* "*thee, that, ſatisfying their petition, thou mayeſt complete* "*his conſecration without delay.*" At Windſor, witneſs, Ranulph, Chancellor.

Thus it appears that the conqueſt of *Ireland* by King Edgar did not affect the juſt liberties of the *church of Ireland*; for the *Norman* colonies therein ſtill enjoyed the uninfluenced *election* of their own Biſhops: and though they acknowledged the juriſdiction of the province of Canterbury in *eccleſiaſtical matters*, even when they were become *independent*, and ſeparated from us, under a King of their own, yet that ſubmiſſion was perfectly *voluntary* and *free*, and was continued for no other reaſon than becauſe they had originally received *epiſcopal ordination* from the Archbiſhops of that ſee. Nevertheleſs they declared themſelves at liberty to receive conſecration from the Archbiſhop of Armagh, and other Iriſh Biſhops, (who earneſtly deſired to confer it on them,) in caſe the prelates of Canterbury ſhould be negligent in their ſuperintendency. And the Biſhops alſo of the *native Iriſh* and their flocks were equally free and independent in *eccleſiaſtical matters*, having preſerved a due ſucceſſion of the ſacred order of epiſcopacy from the early times of their *firſt* converſion (*before* the time of the *firſt Patrick*) down to the barbarous times of our K. Henry II. who invaded their iſland, under the deluſive ſanction of a *papal commiſſion*, to compel the ſubmiſſion of the *church of Ireland* to the juriſdiction and doctrines of the *church*

of

multitude of *precedents*, wherein the *imperial* or *royal* power has been exerciſed in

of Rome, and to pay an annual tribute to the pope of one penny for every houſe; and all this on the deluſive pretence of *inſtructing* the Iriſh, *reforming their manners*, &c. Henry obtained his firſt commiſſion for theſe purpoſes from pope Adrian IV. A. D. 1155, which Archbiſhop Uſher has inſerted in his ſaid collection of ancient epiſtles, p. 109. And he informs us, in p. 152, (from *Trivettus*,) that Henry treated with his parliament at Wincheſter concerning the *conqueſt of Ireland*, but, becauſe it did not pleaſe his mother the empreſs, that expedition was poſtponed to another time. The empreſs, probably, was ſhocked with the *injuſtice* of the propoſal, notwithſtanding the *popiſh diſpenſation* for it.

Afterwards, however, in the year 1172, pope Alexander III. revived the former wicked and preſumptuous grant of Adrian, for invading and uſurping the *temporal rights* as well as ſpiritual juriſdiction of the *clergy and people of Ireland*, (whereby "*the dominion of the Iriſh kingdom was* INDULGED *to*" Henry,) and, in the plenitude of his *unlimited* and *unlawful* power, this "*man of* "*ſin*," ὁ ανομος, preſumptuouſly ratified and confirmed* the *iniquity!* The *uſurping* Popes may therefore moſt juſtly be deemed the moſt cruel enemies and deſtroyers of the *temporal* as well as *eccleſiaſtical* RIGHTS *of the people of Ireland*; yet, ſo great was the darkneſs occaſioned by

* "——*Conceſſionem ejuſdem*" (i. e. Adriani Papæ) "*ſuper Hibernici* "*regni dominio vobis indulto* (ſalvâ beato *Petro* et ſacroſanctæ ROMANÆ "*eccleſiæ*, *ſicut in* ANGLIA, *ſic et in* HIBERNIA, *de ſingulis domibus* "annuâ unius denarii penſione) ratam habemus et confirmamus," &c.

in the *appointment* of *Biſhops*, and, like the *indiſcriminate* Herecourt before quoted, *not diſcerning* that the latter are *precedents* only of *uſurpation*, not of *right!* Thoſe of the oppoſite party, the *preſbyterians*, who attribute the dignity and function of *Biſhops* to their *Preſbyters* *, and

 alſo

by the future *papal* juriſdiction therein, that the *miſt* is not yet entirely diſpelled, ſo that multitudes of well-meaning *Iriſh* people cannot yet perceive that the corrupted and uſurping *church of Rome* ought to be ranked amongſt the moſt inveterate and dangerous enemies of the *church of Ireland*.

* The learned author of "*An Enquiry into the Conſtitution, Diſcipline, Unity, and Worſhip, of the Primitive Church,*" &c. (a work commonly attributed to the late lord-chancellor *King,*) has laboured hard to level the *primitive Biſhops* to the degree of mere *Rectors of pariſhes*, and to elevate the *Preſbyters* to the rank of *Biſhops*, though there are clear proofs of the ſuperiority of *Biſhops* (and of the ordinary reſidence, in each place, but of *one* Biſhop, with *ſeveral* Preſbyters and Deacons at the ſame time) included even in ſome of the citations which he has collected to favour a contrary doctrine. His opinion ſeems to have been built principally on a peculiar explanation of the word *ordination*. "That *ordination*," (ſays he,) "that I ſhall ſpeak of, is this, the grant of a "peculiar commiſſion and power, which remains indelible in the perſon to whom it is committed, and can

"never

alſo more particularly the Independents, who, together with them, contend for the con-

" never be obliterated or raſed out, except the perſon " himſelf cauſe it by his hereſie, apoſtacy, or moſt ex- " tremely groſs and ſcandalous impiety." (Thus far there is no need to oppoſe his ſenſe of *ordination*; but he adds,) " Now this ſort of *ordination*" (ſays he) " was " conferred *only upon Deacons and Preſbyters*, or *on Dea- " cons and Biſhops, Preſbyters and Biſhops being here to be " conſidered as all one*, as Miniſters of the church univer- " ſal," p. 115. This appears to be the key-ſtone, whereby the whole fabric of the doctrine throughout his work is ſuſpended and held up, and, conſequently, the whole building muſt fall by the removal of it! Very happily, for the determination of the diſpute, he has produced (within a few pages after the place whence this quotation was taken) ſome clear and unqueſtionable examples of the *ordination* of ſome perſons to the degree of *Preſbyters*, who really *were not Biſhops*, and never had *epiſcopal* dignity in the ordinary eccleſiaſtical ſenſe of the word *epiſcopal*, ſo that they could not, conſiſtently with truth, " *be conſidered as all one*" with *Biſhops*, according to this learned writer's hypotheſis.

He cites (in p. 133.) the expreſs teſtimony of Euſebius for the *ordination* of ORIGEN to be a *Preſbyter*, " that " the Biſhops of Cæſarea and Jeruſalem *ordained*" (or laid hands upon) " *him into the Preſbytery*," i.e. to make *him a Preſbyter*, " Καισαρειας τε και Ιεροσολυμων Επισκοποι " χειρας εις πρεσβυτεριον αυτῳ τεθεικασι," Euſeb. lib. 6. c. 8. p. 209. Here then is a clear proof of the ordination of a perſon to be a *Preſbyter*, by the hands of *Biſhops*, and yet no man, that has any regard to the teſtimony and

that

congregational or *popular right* to ELECT, are apt to lay *too much ſtreſs* (perhaps) on

 this

truth of eccleſiaſtical hiſtory, will preſume to ſay that *Origen* was a *Biſhop*, though he was unqueſtionably ordained to be a *Preſbyter*; and, conſequently, it cannot be true, that the ordination of "*Preſbyters* and *Biſhops*" is "*to be conſidered as all one.*"

By another quotation, in p. 135, from Euſebius, this learned writer proves alſo that "*Novatian was ordained* "*a* PRESBYTER *by impoſition of hands*," i. e. the hands of a BISHOP, as Euſebius declares: κατηξιωθη του πρεσβυτεριου κατα χαριν του ΕΠΙΣΚΟΠΟΥ του επιθεντος αυτῳ χειρας εις πρεσβυτεριου κληρον. Cornel. apud Euſeb. lib. 6. cap. 43. p. 245.

And that this is a clear example of *the ordination of a mere preſbyter*, manifeſtly diſtinct from *ordination to the epiſcopal dignity*, is demonſtrated by the ſame chapter of Euſebius, which relates the wicked fraud of *this ſame Preſbyter*, Novatian, at a time when he was already a *Preſbyter*, to obtain a *farther ordination* for the *epiſcopal* dignity, by inveigling three ſimple country Biſhops to *ordain him a Biſhop* by the impoſition of their hands. And therefore, though *all Biſhops* are certainly *Preſbyters*, yet theſe examples, cited by the learned writer, clearly demonſtrate that *all Preſbyters are* NOT *Biſhops*, and, conſequently, that their *ordination* is NOT "*to be* "*conſidered as all one.*" The rite of ordination (i. e. *the laying on of hands by the Biſhops, after ſolemn prayer of the whole congregation for the aſſiſtance of the Holy Spirit*) is, indeed, "*all one*," as well in the ordaining of *Deacons*, as in the ordination of *Preſbyters*, and in the conſecration of Biſhops, differing only in the *deſignation* to

theſe

this external circumſtance of FREE ELECTION; for they generally conſider it as *eſſential*

theſe reſpective offices of the Chriſtian Miniſtry, as I have already remarked in p. 316 n; but then this ſingle circumſtance of *deſignation* is ſufficiently effectual to occaſion an *eſſential* difference in the three degrees of holy *orders*; for what are *orders* but *deſignations*, or declarations of the office conferred, or function to be diſcharged? inſomuch that a perſon who hath been duly ordained by the *ſame ſolemn rite*, with a *deſignation* to the office of a *Deacon*, may not aſſume the office of a *Preſbyter*, without a *repetition of that rite*, and an expreſs *order*, or *deſignation*, to the office and duty of a *Preſbyter*; and a *Preſbyter*, who has *twice* received holy *orders* by the ſame ſolemn rite, cannot lawfully aſſume the dignity and office of a Biſhop, until he hath been *firſt* duly *elected to be a Biſhop*; and, *ſecondly*, (which is the *moſt eſſential* circumſtance, by which *epiſcopal* authority is really conferred,) until he have been once more *ordered*, or *ordained*, (notwithſtanding his two former *orders*, as a Deacon and as a *Preſbyter*,) and that with a repetition of the *ſame ſolemn rite*, (the laying on of hands with previous prayer,) but differing in this, that there is always an expreſs *order*, or *deſignation*, to the *epiſcopal* function, previous to the prayers and laying on of hands. The example of *Novatian*, cited above, ſhews that the *re-ordination* of *Preſbyters*, in order to obtain the degree and function of a *Biſhop*, was *deemed neceſſary*, even early in the third century. Other examples, which I have quoted in pages 340–342 n. concerning the *re-ordination* of *Preſbyters* that had been *elected* to be *Biſhops*, prove that the ſame opinion as well as *practice* was preſerved in the

eſſential to the ſacerdotal function; whereas, in fact, it is only *expedient* and *deſirable*,

the middle centuries of Chriſtianity; and the *preſent* univerſal practice of the epiſcopal church, in giving *prieſts orders* always previous to *epiſcopal* conſecration, is too well known and eſtabliſhed, to need the citation of particular examples for illuſtration.

The learned Chancellor (if he was the writer of the ſaid book) hath alſo *ſuppoſed*, that the petition of a *candidate for holy orders* "was to the whole Preſbytery, "becauſe" (ſays he, p. 115.) "a Biſhop alone could "not give thoſe holy orders, as is moſt evident" (ſays he) "from *Cyprian*, who aſſures us, that *all clerical* "*ordinations were performed by the common counſel of the* "*whole Preſbytery*; and, therefore," (ſays he,) "when, "upon a *moſt urgent and neceſſary occaſion*, he had been "forced to ordain one but a *Lector*, without the advice "and conſent of his *Preſbytery*, which, one would be "apt to think, was no great uſurpation, he takes great "pains to juſtify and excuſe himſelf for ſo doing." But all this ſuppoſition falls, at once, to the ground, as ſoon as the authority, which he has cited for it, (Cyprian's 24th Epiſt.) is more carefully examined; for it really contains no ſuch doctrine, and doth *not at all* relate to "*clerical ordinations*," which he has too haſtily ſuppoſed; Cyprian had *not* given "*holy orders*" (the ſubject of the learned writer's argument) to the perſons for whoſe appointment he thought it neceſſary to apologize in that epiſtle; for they were ſtill "*ſub clero*," as he expreſsly declares, *under the degree of clergy*; ſo that the apology could not be for having *ordained* any one in the *eccleſiaſtical* ſenſe of that word; but only for "*having*

"MADE

ble, but not abſolutely neceſſary, being, indeed, the moſt prudent mode of *introduction*

"MADE (or appointed) one man a *Lector*, or *Reader*, "in the church, and for *having* MADE another man a "*Subdeacon*." "FECISSE *me autem ſciatis* LECTOREM "*Saturum*, et HYPODIACONUM *Optatum Confeſſorem*." Theſe were mere local functions in the church, at the diſpoſal, not only of the *Preſbyters* and Deacons, but alſo of the *laity*, or whole congregation, who have a *right* to elect to ſuch offices, in many places, even to this day; ſo that an apology was really neceſſary in this caſe, for having acted *without their conſent*; but no apology would have been due, had the caſe been a *mere ordination*, or *conferring of holy orders*. The example is entirely foreign to the queſtion of *preſbyters* having a right to *confer holy orders*; and, as a proof that it is ſo, be pleaſed to remark, that the apology is addreſſed *jointly to the Preſbyters and Deacons*; and cannot, therefore, prove the right of the *former* to confer *holy orders*, without admitting, alſo, the *latter* to the ſame degree of authority, an idea which the learned writer never intended to promote.

Cyprian has been as much miſunderſtood by ſome former advocates for the *Preſbyterian* pretenſions to the *right of ordaining*; who "to prove that *ordination by* "*Biſhops, without the aſſiſtance of* PRESBYTERS, *was* "*always forbidden and oppoſed*, tell us" (ſays Dr. Hammond) "of *Aurelius*'s being ordained by *Cyprian*, and "his *collegues*, ep. 33. and then aſſures us from epiſt. "58. that, by his *collegues*, he means his *Preſbyters*, "(where yet there is no other proof of it, but the uſing "of theſe *words* in the *inſcription* of the *epiſtle*, Cypri-

"anus

duction to the conſtituting *rite of conſecration*, but no part of the *rite* itſelf, which

" anus *cum collegis*, et *ego et collegæ*, Cyprian *with his* " *collegues*, and *I and my collegues.)* This" ſays Dr. Hammond) " is a great, but diſcernible, *fallacy*, put " upon the *reader*, as will ſoon appear, 1. if we but " obſerve that the 33d epiſtle, where he tells of Aure- " lius, was written by *Cyprian* to his *Preſbyters*, and ſo " THEY ARE the perſons whom he advertiſeth, what " *he and his collegues* had done, and ſo, ſure, WERE " NOT thoſe *collegues* that did it *with* him. Or, ſe- " condly, if, for the underſtanding *Cyprian's* notion " of *collegues*, ep. 58. we ſhall but look forward to the " next epiſtle, 59, for that will fully diſcover it, being " this, *Cyprianus et cæteræ collegæ qui in concilio aſſuerunt* " *numero* LXVI. where *Cyprian's collegues* are evidently " the 66 Biſhops that were in *council* with him. And " ſo St. *Auſtin*, in his 28th epiſtle to St. *Hierome*, men- " tioning this very *epiſtle*, ſaith, *Cyprianus cum Coepiſ-* " *copis ſuis*, *Cyprian with his fellow Biſhops*; an irre- " fragable evidence that theſe his *collegues* were *Biſhops*. " The like" (ſays he) " might be alſo obſerved of the " *teſtimony* out of *Firmilian*, which they there ſubjoin, " of the *Seniores* and *Præpoſiti* that have *power* of *ordain-* " *ing*, by whom, ſay they, the *Preſbyters*, *as well as* " *the Biſhops*, *are underſtood*; but again, it is clear, by " the expreſs words of the *epiſtle*, that by them are " meant the *Biſhops* in their *annual council*; *neceſſario* " *apud nos ſit ut*, *per* SINGULOS ANNOS, SENIORES *et* " PRÆPOSITI *in unum conveniamus*," &c.

I ſhould not have made ſo long a quotation from Dr. *Hammond*, had not the learned *Chancellor* (or author of

which consists only of *solemn prayer*, with the *laying on of hands*; in which latter the *laity* can have no pretence to interfere *.

But

the tract just before cited) once more held forth these very testimonies to justify *ordination by Presbyters*, though they had long before been so amply confuted by Dr. Hammond.

"It

* We may safely acknowledge, without injury to our *election-rights*, that the Bishops of the primitive church who succeeded immediately after the apostles, were not generally *elected* by the *people*, but were appointed either by the apostles themselves, as I have before remarked, or by *apostolic men*, for which see the evidence of Tertullian, p. 243. "Ceterum, si quæ audent "interserere se ætati apostolicæ; ut ideo videantur ab "apostolis traditæ, quia sub apostolis fuerunt, possu-"mus dicere: edant ergo origines ecclesiarum suarum: "*evolvant ordinem episcoporum suorum, ita per successiones* "*ab initio decurrentem, ut primus ille* EPISCOPUS *aliquem* "*ex* APOSTOLIS, *vel* APOSTOLICIS VIRIS, *qui tamen* "*cum apostolis perseveraverit, habuerit auctorem et ante-*"*cessorem. Hoc enim modo ecclesiæ apostolicæ census suos de-*"*ferunt: sicut Smyrnæorum ecclesia Polycarpum ab Joanne* "*conlocatum refert: sicut Romanorum, Clementem a Petro* "*ordinatum itidem: perinde utique et ceteræ exhibent quos* "*ab Apostolis in Episcopatum constitutos apostolici seminis* "*traduces habeant.* Confingant tale aliquid hæretici. "Quid enim illis post blasphemiam inlicitum est? sed "etsi confinxerint, nihil promovebunt. Ipsa enim doc-"trina eorum cum apostolica comparata, et diversitate

"et

But this *primitive right* of the church, the *laying on of hands*, is publicly rejected by many of the Independent and Socinian miniſters. "*The ceremony of* THE IM-"POSITION OF HANDS" (ſays one of them, for inſtance, in reporting the character of an eminent Socinian Preacher) "*he alſo refuſed to ſubmit to, becauſe he* "*conſidered it as void of any juſt meaning,*

 "*where*

"It is a ſad miſtake" (ſays the rev. Mr. Tho. Salmon, in his *Hiſtorical Collections relating to the Originals, &c. of the Inhabitants of Great Britain*, p. 445-449.) "of "thoſe who have a prejudice againſt epiſcopacy, that it "is an invention of the *Popiſh* times, and that our *Re-* "*formers* ſo modelled the conſtitutions of our church, "as they might be moſt agreeable to the humour of the *Romaniſts*.

"et contrarietate ſua pronunciabit, neque apoſtoli ali-"cujus auctoris eſſe, neque apoſtolici: quia ſicut apoſ-"toli non diverſa inter ſe docuiſſent, ita et apoſtolici "non contraria apoſtolis edidiſſent. Niſi illi qui ab "apoſtolis didicerunt, aliter prædicaverunt. Ad hanc "itaque formam probabuntur ab illis eccleſiis, quæ "licet nullum ex apoſtolis, vel apoſtolicis, auctorem "ſuum proferant, ut multo poſteriores, quæ denique "quotidie inſtituuntur: tamen in eadem fide conſpi-"rantes, non minus Apoſtolicæ deputantur, pro con-"ſanguinitate doctrinæ," &c. p. 243. Paris edit. 1641.

"*where no extraordinary gifts are, or can*
"*be, imparted.*" This opinion of "*the*
"*impoſition of hands*" muſt have been too haſtily taken up, becauſe it is certainly erroneous. The fact is, that this ceremony, like all other *outward rites*, that were inſtituted by Chriſt, or his Apoſtles, *may*, or *may not*, be efficacious, according to the *inward diſpoſition*, or ſincerity, of the perſon to whom the *outward rite* is adminiſtered.

Neither

"*Romaniſts.* But, certainly, the hiſtory of Britain may
"convince any man of the contrary. The *Popiſh* times
"did not begin at the council of *Arles*, yet there we
"had our Biſhops: The fathers of the council of *Nice*
"had ſpent their days under the ſevereſt perſecutions
"of the heathen, and were juſt entered upon the morn-
"ing of the chriſtian empire, and ſhall we think that
"popery was then prevalent? Our church is now ſet-
"tled as it was at that time: Not only Biſhops all over
"*Britain*, ſo far as it was chriſtian, but very near the
"ſame number of Biſhops. The three chief biſhop-
"rics were ſettled at three moſt diſtant and proper places
"to have juriſdiction over the reſt, *London*, *York*, and
"*Caerleon*: There were in all 28 cities, and accord-
"ingly 28 biſhoprics, as the number is given us both
"by *Gildas* and *Bede*; and, if we have now two leſs,
"yet

Neither the adminiſtration of *baptiſm*, nor the participation of the *Lord's Supper*, can impart any good effect on thoſe who

" yet ſo much of Britain as lies between *Berwick* and " *Edinburgh*, now belonging to *Scotland*, may well " be allowed for the making of two. At the council " of *Nice*, the juriſdiction of their metropolitans was " ſettled, and the union of all the Biſhops of the Pro- " vince provided for: Such was the order and harmony " of the whole clergy, that, though the dioceſe was ſo " large that it could not be particularly known and " taught by the ſuperior officers of the church, yet every " one acting in his place, and being accountable to " thoſe above him, there was no defect either in the " doctrine or diſcipline of thoſe primitive times.

" Certainly there is demonſtration for epiſcopacy, " in that there *were not only Biſhops before popery*, but, " when the popiſh miſſionaries ſet up in the world, " *the old Biſhops were the very men that made the oppoſi-* " *tion againſt them.* Nothing can be more undoubted " in hiſtory than that the *Britiſh* Biſhops met *Auſtin* " and his companions at the famous oak upon the banks " of *Severn*, and there utterly broke with them, pe- " remptorily refuſing ſubjection to the pope of Rome. " It is alſo as certain that *Colman*, biſhop of *Lindis-* " *farn*, and his northern clergy, who had their origi- " nal Chriſtianity from *Britain*, maintained the grand " diſpute at *Streanſhale* againſt *Agilbert*, *Wilfrid*, and " the reſt of the Romaniſts; that they retired and for- " ſook their preferments rather than they would ſubmit " to the impoſitions of *Rome*. The laying aſide their

" ancient

receive them *unworthily*, without ſince-
rity, without regard to the *internal* and
ſpi-

" ancient obſervations, and receiving the papal tonſure,
" were looked upon by them both as innovations and
" badges of ſervitude to a foreign power, and therefore
" rejected by them, as they are by us at this day. We
" muſt maintain, like them, the cuſtoms of the church,
" which have been from the beginning; there *always*
" *was a commemoration of Chriſt and his apoſtles at certain*
" *times*, which we alſo obſerve without any he or ſhe
" ſaints of the *Roman* make: There always was a ſub-
" miſſion to the authority of the church in matters of
" decency and order, which is all that we require,
" without the leaſt ſubjection to the church of *Rome*:
" We yield no deference, we utterly renounce her au-
" thority over us. And, to ſuppoſe that our reformers
" either wanted judgement to diſtinguiſh between the
" ancient cuſtoms of the church and the latter inventions
" of popery, or that they wanted integrity to the true
" chriſtian religion, whoſe works and martyrdom bear
" witneſs in their favour, is ſuch a pretence as cannot
" ſupport itſelf under a ſincere conſideration.

" *We ſhould be fond of epiſcopacy, if we did but review*
" *that oppoſition which the pope always made againſt it*;
" if we did but obſerve *how he could never compaſs his ends*
" *but by the deſtruction of its power*. He raiſed up the ſe-
" veral orders of monks, that thoſe who were employed
" in religion might depend *upon him, and not upon their*
" *Biſhops*; he exempted the monaſteries from the juriſ-
" diction of the dioceſans, that all thoſe rich planta-
" tions might heartily eſpouſe the tyranny and ſuperſti-
" tion of *Rome*. He did all he could to transform the
" biſhops

ſpiritual ſignification; but merely to pleaſe men by an *outward* conformity to the

"biſhops into monks, and prevailed ſo far that every "archbiſhop of *Canterbury* thought it neceſſary to put "on that habit; which made his *epiſcopacy ſubſervient* "*to another ſort of government*. He found that a dioceſan "Biſhop, with his clergy in a cathedral church, was ſuch "a bulwark to the national eſtabliſhment, that he could "not dilate his empire; he therefore, by his intereſt "with King *Egbert*, got the great *Oſwald* law to paſs, "*by which the Preſbyters were caſt out, and monks put in-* "*to their places*. How can epiſcopacy be a popiſh in-

"vention,

"GOD *is a* SPIRIT, *and they that worſhip him, muſt* "*worſhip him* IN SPIRIT *and in truth*." John iv. 24.

There is nothing in this text which can fairly be conſtrued *againſt* the uſe of external ceremonies, either of the *laying on of hands*, or of the *ſacramental inſtitutions of Chriſt*, though it is certainly applicable to enforce the neceſſity of a *ſincere and ſpiritual devotion* in the uſe of them, as alſo in our daily *prayers*: but thoſe men who not only deſpiſe theſe inſtitutions of Chriſt and his primitive church, but even neglect, for the moſt part, in their public meetings, Chriſt's poſitive injunctions TO PRAY, ("*Aſk and it ſhall be given to you*, &c. Mat. vii. 7.) and neglect more eſpecially TO PRAY for the HOLY SPIRIT, (which is ſo clearly promiſed "*to* "*them that aſk*," Luke xi. 9–13.) through a groundleſs perſuaſion that they do obtain that heavenly gift by other means; thoſe men, I fear, are under *a very dangerous deluſion of a contrary ſpirit*; for it would be unreaſonable to admit their pretenſions to *ſpiritual worſhip* in the

the ceremonies for ſome worldly advantage, or favour, as many do by way of teſt:

" vention, when it has been all along *the great buſineſs* " *of the pope to overthrow it?*

" We muſt ever own great honour and reverence due " to *Columba*, who planted his monaſtery or univerſity " in the iſle of *Hye*, upon the coaſts of *Scotland*, which " was a ſeminary for all the chriſtian miniſters of the " north; but that the cuſtom or education of this place " ſhould be againſt epiſcopacy is impoſſible, ſince they " *not only had a Biſhop in that little iſland*, but *Adam-* " *nanus*, one of the ſucceſſors of *Columba*, gives us " an account of the great deference they always paid " to that order. Biſhop *Aidan* came from thence, con- " verted the *Northumbrians*, had his epiſcopal ſee in " the iſland of *Lindisfarn*, which was afterwards re- " moved to *Durham*. After he was dead, Biſhop *Finan* " was ordained by the *Scots*, and ſucceeded him; by " *Finan* was *Diuma*, the firſt Biſhop of *Litchfield*, or- " dained, whoſe ſucceſſors were alſo from *Scotland*, " and of the epiſcopal order. We meet alſo *Colman* " from *Scotland*, that Biſhop of the *Northumbrians*, " who was ejected for the proteſtant cauſe. If *Columba* " himſelf had ſuch an affection of the monaſtic life, that " he would not ſtir from *Hye*, and was of ſo great au- " thority that it was thought fit the Biſhops of the north " ſhould

the ſenſe of that text of John, (viz. " *in ſpirit and in* " *truth*,") whilſt they prefer their own *novel* way of worſhip to that *true* worſhip which was ſo clearly commanded by Chriſt, and practiſed by the primitive Chriſtians, and the univerſal church.

teſt: to ſuch men "*no extraordinary gifts are, or can be, imparted*" by theſe *outward* rites, which, on the contrary, rather increaſe their condemnation. For, though very worthy miniſters, who officiate therein, or adminiſter theſe *outward* rites, may be deceived by the outward deportment of the perſons to be baptized, or communicating, yet God's *Holy Spirit* is not to be mocked, as we learn by the ſad example of Ananias and Saphira, whoſe diſſimulation was puniſhed by an immediate ſtroke from God, to impreſs the infant church with a due ſenſe of the Almighty

" ſhould be accountable to him and his ſucceſſors, to " whom ſo much was committed of the royal power, " this can be no argument againſt epiſcopacy itſelf; " ſince it is declared, at the ſame time, that ſuch a " ſubmiſſion of Biſhops to an abbot was a perverting " that order which was eſtabliſhed in the church. Thoſe " who read only the account of *Scotland* in the laſt " century, may, perhaps, have an opinion that there " was an ancient" (form) "of Preſbyterian government " there; but all authentic hiſtories teſtify that they had " the ſame conſtitution of eccleſiaſtical orders, which " were in the reſt of *Britain*, and all other chriſtian na- " tions."

mighty Power, and the neceſſity of *ſincerity* in all things pertaining to God's Service. Such extraordinary *outward* manifeſtations of God's Spirit are not now to be expected; it is ſufficient that they continued until authentic hiſtorical accounts of our holy religion were diſperſed, in writing, throughout the greateſt part of the known world, and the canon of the ſacred Scriptures completed, in which ample accounts of them are related; ſo that we may ſay of the New Teſtament, as our Lord ſaid of the Old Teſtament, adding, to *the neceſſity of believing Moſes and the Prophets*, the *neceſſary belief*, alſo, of the New Teſtament, that the men who believe not theſe additional teſtimonies, of Chriſt's Diſciples and witneſſes, *would not believe, even if one ſhould riſe from the dead!* Thus it appears, that the extraordinary *outward* manifeſtations of God's Spirit, in working miracles, are no longer *neceſſary* for the edification of the

church

church; but we muſt not, therefore, ſay that "*no extraordinary gifts are, or can* "*be, imparted!*" For miracles are not the only teſt of the real inſpiration of *God's Holy Spirit*, but *love, good works, and holding faſt the faith, which was once delivered to the Saints:* Theſe are the *fruits* by which we are to judge of the tree; and, without theſe, even miracles are to be ſuſpected of deluſion, and are to be eſteemed rather as the *lying wonders of Satan* than as the works of God! The power of *working miracles*, therefore, is not ſuch an "*extraordinary gift*" as we have any right to look for or to expect under the preſent diſpenſation of the *chriſtian religion*; and yet "*the gift of* "*God's ſpirit*" (which every true Chriſtian has a *right* to expect, according to the unqueſtionable promiſes of Chriſt) is certainly "*an extraordinary gift,*" and is as certainly "*imparted*" to all that *duly aſk it* in the meritorious name of our

Redeemer, if we may confide in the truth of the holy Scriptures! It is always "*an extraordinary gift*," (though "*im-*"*parted*" according to *the ordinary* diſpenſation of our religion,) becauſe it ſupports and endows pious and worthy men, on many occaſions, far beyond their *ordinary*, or natural, abilities and ſtrength. It is, I ſay, a real addition to the *ordinary* nature of man, and therefore always "an "*extraordinary gift*;" being nothing leſs than a real participation "*of the* DIVINE "NATURE," of which we may, if we will, be *partakers* (θειας κοινωνοι φυσεως) through the "*exceeding great and precious* "*promiſes*" of that divine perſon "*that* "*hath called us to glory and virtue.*" See 2 Pet. i. 3, 4.

If men are thus aſſured that this "*ex-*"*traordinary gift*" may be obtained by *aſking*, according to Chriſt's directions, they ſurely cannot doubt of its being "*im-*"*parted*" when they *aſk it* in a more par-

particular manner on great and ſolemn occaſions, as at the *baptiſm* of adults, or the *confirmation* of perſons that have been baptized in their infancy; and at the ſacramental *commemoration of Chriſt's death*, according to our Lord's own inſtitution: thoſe *outward rites* cannot *impart the extraordinary gift*; but the goodneſs and truth of God are abſolutely pledged (if I may uſe ſuch an expreſſion) to fulfil the "*exceeding great and precious promiſes*" in favour of *prayer* for that *extraordinary gift*; and ſuch *prayer* (having this the object) doth always make a part of thoſe *ſolemn rites*; whereby they are moſt certainly rendered efficacious, if *ſincerity* be not wanting in thoſe perſons to whom they are adminiſtered.

And it is exactly the ſame thing with reſpect to "*the impoſition of hands*," (either in the conſecration of Biſhops, or in the ordination of Prieſts and of Deacons,) becauſe that *ancient rite* of Chriſt's church

is always performed with *ſolemn prayer*, in Chriſt's name, for the *Holy Spirit* to guide and aſſiſt the perſons conſecrated or ordained; and the prayers of the congregation are alſo deſired on their behalf; and therefore, if the perſons *elected* to be conſecrated for the office and dignity of Biſhops, and the candidates for Prieſts, or Deacons orders, are really *ſincere* themſelves in their *prayers* and undertakings, there is no doubt but "*the laying on of* "*hands*," thus accompanied with ſuitable prayer and devotion, is truly efficacious, and doth "*impart the extraordi-* "*nary gift*" abovementioned. For the action of "*laying on hands*" hath nothing in it indecent, immoral, or contrary to God's laws, ſuch as might be ſuppoſed to hinder the good effect of Chriſt's abſolute *promiſes to them that aſk*; but, on the contrary, is authenticated and ſanctified by *apoſtolic uſage*, declared in canonical Scripture,

Scripture, as well as by the conſtant ſubſequent practice of all the primitive churches of Chriſt; and ought not, therefore, to be laid aſide on the groundleſs pretence that "*no extraordinary gifts are, or can be, imparted.*"

GRANVILLE SHARP.

Old Jewry, Oct. 1784.

A very

GRANVILLE SHARP.

Old Jewry, ca. 1784.

A very worthy member of parliament, having lately read as much of this Book as was then printed, was pleaſed to propoſe the following queries; in anſwer to which the following letter was ſent to him by the author, viz.

"*How could we divide this and other*
"*great towns into tithings?*
"*Would not ſtreets be a better diviſion*
"*in cities? Pariſhes and ſtreets, inſtead*
"*of tithings and hundreds?*"

ANSWER.

Dear SIR,

THE ancient mode of dividing great cities was by *wards*; each of which was governed by an *alderman*, the *ealdorman* of the Anglo-Saxons, an officer of great authority in the *common law*; being a JUSTICIARY, and having all the powers of our modern *juſtices of the peace*; and, what is more, was always elected by the

houſe-

houſe-keepers or *deciners* of the *ward over* which he preſides. This antient mode of diviſion by no means interferes with the leſſer diviſions of *tithings* and *hundreds*; ſo far from it, that the government of the *wards* is not complete without them. The Lord Mayor's precept, to the aldermen, orders them (to this day) to hold courts of *frankpledge* *; which were not without the regular diviſions of *tithings* to give them effect. The wards are *local* diviſions of various magnitude, and have been formed, (as you ſuggeſt,) ſome by *ſtreets*, ſome by the interſection of *brooks*, now covered over; but thoſe various dimenſions

* See Bohun's Privilegia Londini, p. 386, under the head of *Wardmote Courts* and the Lord Mayor's annual Precept to hold them; which latter, amongſt other things, contains the following article.—No. 11. "And, for "that, of late, there is more reſort to the city of per- "ſons evil affected in religion, and otherwiſe, than in "former times hath been; you ſhall diligently inquire "if any man be received to dwell or abide within your "Ward, that is not *put under* FRANKPLEDGE, *as he "ought to be by the cuſtom of the city*:" &c.

menſions of ſpace required a regular *numerical* diviſion of the *houſekeepers*, in order to aſcertain the due proportion of the repreſentatives in the *common-council* of the city.

The average-rate of *common-councilmen* to the *houſekeepers*, or *deciners*, is, at preſent, about one to 90. And as the city was, in antient times, more populous, and the houſes ſmaller for each family, when men were reſtrained by law from building in the environs of the city, it is probable that the true proportion of *houſekeepers*, to elect *one common-councilman*, ſhould be 100; ſo that the common council has formerly been an aſſembly of *hundreders* or *high conſtables*. As the gates of the city have been removed ſo as to leave this moſt important place entirely expoſed to the fatal conſequences of any ſudden riot, the attacks of any

hardened banditti, and (eſpecially in caſes of any alarms by fire,) to the moſt dangerous confluence of multitudes of unknown people, many of whom plunder the diſtreſſed, and others hinder the neceſſary means of aſſiſtance, it is highly expedient that ſome means of defence ſhould be deviſed. I have been told, that, in the great cities of Japan, the ſtreets are barricadoed and ſhut up with *paliſade* gates every night, and that the people are actually divided into *tithings* and *hundreds*. I have much to ſay on this ſubject; and, if you are not going out of town immediately, I will do myſelf the honour to wait on you and communicate my thoughts.

I remain, with great eſteem,
Dear SIR,
Your moſt humble Servant,
GRANVILLE SHARP.

Old Jewry, Aug. 21, 1784.

* * * *, Eſq.

INDEX to the Tracts on Congregational Courts, &c.

A.

ABandoned man, (character of) 162 n.

Abbot. The ſubmiſſion of Biſhops to an *Abbot*, a perverſion of order in the Church, 359.

Abſalom, 171 n.

Acts of Parliament. See *Statutes*.

Adamnanus, 358 n.

Adrian (3d) Pope, 329.

——— (4th) Pope, 344 n.

Ædiles, 34.

Æmilia, (Province) 321, 322.

Affray. See *Fray*.

Africa. Alterations recommended to be made in the plan (Mr. Smeathman's firſt plan) for a new ſettlement on that Coaſt, 263 to 281. Managers or Agents ſhould have no ſettled dominion over the people, as governors or judges, 266, 267, nor be allowed any private trade, but be admitted to ſhares of the company's profits, ib. Officers for internal government ſhould be *elected* every year by all the inhabitants, ibid.

Agelbert, 355 n.

Agnellus, 307.

Ahaziah, 221.

Aidan, 358 n.

Aland, 239 n.

A Lapide, (Cornelius,) 58.

Alarms, (falſe) by wanton perſons to be enquired after, 117 n.

Alderman, a juſticiary elected by the houſekeepers, ers, 367, 368.

Ale, 130.

Alexander (2d) Pope, 308.

——— (3d) Pope, 344 n.

Alfred, or *Aluredus*, King, firſt diviſion of England into *hundreds* and *tithings*, &c. commonly, but erroneouſly, imputed to him, 3, 6, 19, 20, 268 n. 278 n. ſee alſo *Britons*. *Arthur*, K.

Ambroſius, a monk.

Amerciaments. The limitations thereof, 86, 231 to 235. —for not obeying ſummons of *hundred courts* and *county courts*, 231 to 235,—of jurors for abſence, 113.—not to be alienated from the crown, 134 n. *fines* and *mulcts* for *manſlaughter* and *murder* falſely ſuppoſed to be in lieu of perſonal puniſhment, but proved to have been reſtored as ſoon as the *murderer* was brought to juſtice, 237 n. to 239 n. Pecuniary mulcts (in moſt other caſes) more effectual than

than capital puniſhment, 237 to 240, 280. Lord of leet, &c. may diſtreyne for amerciaments and ſell the diſtreſs, 226 n. rich ſonds may be obtained by fining delinquents, 280. See alſo *Magna Charta*.

Amnon, 170 n. 171 n.

Anaſtaſius, (2d,) 65.

Anglo-Saxon government deſcribed, 268, 286. See *Frankpledge*.

Anomos, (ὁ ἀνομος,) the "*man of ſin*," 314, 315, 317, 324, 325, 326, 327, 328, 329, 344 n.

Anſelm, 341.

Antioch, 310.

Antoninus, Archbiſhop of Florence, 326 n.

Apology, of the author to *Roman Catholics* for the ſeverity of his teſtimonies againſt the *papacy*, 74 n. 75 n.

Apoſtacy of the *Roman church*, 5, 57, 58, 63, 73, and the *marks* of it, lying, forgery, "deceivableneſs of "unrighteouſneſs, forbidding to marry, commanding to abſtain from "meats," 71 to 73. warning of theſe *marks*, 75 n. 78 n. *natural* depravity of mankind tends not to *ſuch marks*, ſo that they can only be attributed to *ſeducing ſpirits*, 79 n.

Archaionomia, (Lambard's) 3, 16.

Arles, 2d council of, and *Aurelienſe concilium* 2. (2d council of *Orleans*) their deceitful inſertion of *vel* for *et*, to pervert the popular right of *electing biſhops*, 312, 313.

Armagh, biſhop of, 340 n.

Armies. See *ſtanding armies*.

Arms. All men to have *arms* and be trained in the uſe of them, 191, 195, 198, 200, 204, 208, 209, 229. reſtraint from pawning them, 205 to 209.

Arreſt, wrongful, 122. All perſons preſented for mortal offence to be ſeized, and all baniſhed perſons returned, and their receivers, 117, and all ſuſpicious perſons, 224.

Arthur, K. 199. That he found this law of *frankpledge*) which enabled him to conquer (not the *Saracens*, but) the *Scanians*, 200 n. 208 n. That he united the kingdom *by this law*, and thereby drove out the *Scantians*, 203 n.

Articles of *enquiry* at *views* of *frankpledge*, *trithings*, or *court-leetes*, *hundred courts*, or *wapentachs*, 112 to 147. —againſt bribery at elections, 186 to 189. —of watch and ward not duly kept, 190.

Artillery (regiment of) 193 n.

Aſſiſe

Aſſiſe of the king, is the *view* of *frankpledge*, 115 n.
Aſſiſe of *beer*, *bread*, *meaſures*, *weights*, *wine*, &c. 120, 121.
Aſſociation, plan of, 268. See *government*.
Atkins, (judge) extract from his parliamentary and political tracts, 196, 197.
Auguſtulus, 306 n.
Avitus, biſhop of *Tarraciua*, 304.
Aurelius (2d n.)
Auſtin (St) 351.
—— (the monk) 355 n.

B.

Bailiff, 125, 136, 137.
Bayling, or *bailing*, wrongfully, 123, 124. letting go without *Bail*, 124. *Bailable* perſons detained, and *unbailable* diſmiſſed, 124 n.
Balances, (falſe,) to be enquired of, 120, 121.
Balſamon Theodore, 78 n. 310.
Bangor, 302
Baniſhed perſons returned to be enquired after, and their receivers, 117 and 117 n.
Baptiſm 355, 363
Barcelona (Council of) The biſhops of *Tarragonia* at this Council reſtore the apoſtolical mode of epiſcopal *elections*, 90 n.
Beans, 130 n.
Beaſt (Roman) 55, one of his heads wounded to death by a ſword, 63 n. 65 n. 306 n. The deadly wound healed, ib. Marks of the approaching end of the 1260 years of its tyranny, 75 n.
Bede, 354 n.
Beer, 130, made of beans, 130 n.
Belial, 169 n.
Berwick, 355 n.
Beveridge, Biſhop, 309, 317, 318.
Biſhops, ſuppoſed to have each a *free borough* in their own *houſeholds*, and therefore not obliged to be included in the ordinary *Tithings*, 14, 99, 248. The right of electing them withdrawn from the people by the encroachment of popes, emperors, and kings, 5 n. 63, 309. The right of biſhops to ſit in the congregational courts of common law, 60, 75, 92 n. fully proved by Sir Edward Coke, 60, 61, 78, 79, 297, and by Sir Henry Spelman, 75 n. alſo from Selden, 78. Popiſh biſhops had different intereſts from the people, 80. Various authorities touching the right of the peo-

people to elect their own biſhops, 5 n. 63 n. 67 n. 68 n. 88 n. 92, 93, 297 to 330. Qualifications of perſons to be *elected* biſhops, 88 n. Election of two qualified perſons, according to the *apoſtolic mode*, recommended 88, and to decide by *lot* 89 n. 90. Council of *Barcelona* ordain this rule for epiſcopal election, 90 n. *Biſhops* by popular *election* would be rendered *robur reipublicæ*, 91, 297, 298, and popular magiſtrates, 297. The aſſent of *Parliament* once required to their *election* or *confirmation*, 301, 302, 303, 304. Were *elected* alſo in *Italy* by the people, 304, 305. *Papal* encroachments on *epiſcopal elections*, 306 to 309. Both *Biſhops* and *Prieſts* formerly *elected* by the people, 310. Biſhops how diſtinguiſhed from mere *Preſbyters*, 316 n. The ſubmiſſon of *biſhops* to *abbots*, a perverting an eſtabliſhed order in the church, 359 n. See alſo *Concordate*, *Epiſcopacy*, *France*, *Ireland*, *Ordination*.

Biſhops of Rome aſſume to themſelves the title of *Pontifex Maximus*, which belonged, 1ſt. only to the Head of the college of *Pagan Augurs* at *Rome*, but afterwards to the *Roman emperors alone*; and could not have the leaſt connexion with an eccleſiaſtical function in the Chriſtian church, but is the prophetical mark of the *image of the beaſt*, the head that was *wounded to death* and was healed, 63 n. to 68; 306.

Blindneſs, (judicial,) 71.

Blood-ſhed, inqueſt thereof, 116, 118 n. if wilfully ſhed, cannot be cleanſed but by the blood of the murderer, 156 n. 157 n. 239 n.

Bohun's Privilegia Londini, 368 n.

Borbes, *Boroes*, Pledges or *Sureties* called *Tithings*, 100, 101 n. 247.

Boroughes, 246, 254 n.

Bounds, encroachments on, 119 n. 120. 120 n.

Bouquet Henry, Eſq. 285.

Bracton, 99, 146 n. 237, 238 n.

Breeches Maker, 128.

Bribery at elections. How a man, by it, may be diveſted of his *humanity*, in a *moral* as well as a *legal* ſenſe, 46 n. See ſtatute againſt it, 2 Geo. ii. c. 24. whereby the *briber* and the *bribed* are diſabled to hold office or franchiſe, as if *naturally dead*;

dead; alſo ſtatute 7 Will. III. c. 4. whereby a perſon, though elected, is rendered incapable to ſit in Parliament, who ſhall have given meat, drink, or entertainment, to electors, 48 n. Additional articles of Inqueſt againſt theſe corruptions, 185 to 189.

Bridges, broken, to be enquired of, 125.

Britain, of the antient biſhops of Britain, 354 n. 355 n. Britiſh biſhops oppoſe *Auſtin* and refuſe ſubjection to the church of *Rome*, 355 n. See alſo *Britons*.

Briton quoted, 31, 32, 105.

Britons had the *law of frank-pledge* from the Romans, 204 to 208. See alſo Britain.

Brompton's Chronicon, 19.

Burgage tenure, (from *burg*,) the *legal* deſcription of it, viz. *renting a houſe by the year*, &c. 37, 38, 246, 253. Its ancient uſage ſtill retained in the city of Weſtminſter and the Borough of Southwark, 254.

Burgh, or *Berg*, Etymology thereof, 247.

Burg, etymology thereof, 246, 247 n.

Burglary 116 n. 117 n. how prevented, 255.

Butchers, 129.

By-Laws. See *Court Leet*. *Church*.

C.

Cadwallader, 202 n.

Caerleon, 354 n.

Camelodunum, Malden, 34.

Canons and *Decretals* (foreign) introduced under *Papal* uſurpation, 69. The antient *canons* confirmed the rights of the clergy and people in *epiſcopal elections*, *marriage*, &c. 77 n. 317, 318, 328. The 5th and 51ſt *apoſtolical canons* quoted, 77. Some of the later *canons* proved to have favoured the encroachments of *papal tyranny* and *apoſtacy*, 77–79, 332, 333.

Canterbury (abp. of) conſecrated the *biſhops elected* by the *Norman* colonies in *Ireland*, viz. *Dublin*, *Waterford*, *Limerick*, 338 n. 344 n. See alſo 357 n.

Canute (K.) by his laws murder was deemed *Boteleſs*, or *inexpiable*, 239 n. See alſo *Blood*.

Capital Puniſhments. See *Puniſhments*.

Capitales plegii, 114 n.
Capitalis Friborgus, 249 n. See *Headborough*.
Captains of Tens. See *Tithingmen*.
Caſtorius, 67, 68.
Cave, (Dr.) 309, 339.
Cauſes broken, 125 n.
Ceapgyld and *Orſgyld* explained, 231, 232.
Centenarii were *Juſticiaries*, 27 n. 28.
Centuria, 25.
Centuries, 19, 45, *Centuriata comitia*, in the government of *Rome*, inſtituted by Servius Tullius, 204 n. 205 n.
Chair, (the perforated,) or *Sedes ſtercoraria*, 326 n.
Challenge of jurymen, how many a man may *challenge* and reject, as a guard againſt *partiality*, 214.
Charles the Great, and *Louis the Good*, of *France*, declare the people's right of *electing* their own *biſhops*, 319, 320, 321.
Charter, a fictitious *charter* falſely attributed to Will. the Conqueror, 70. the iniquity of *forging* ſuch a ſtatute, to take away the right of the popular courts in judging eccleſi. cauſes, 71–75.
Cheaters, 132.
Cherubim, 150
Chief-pledge, (Tithingman or Headborough,) 114, 145, 149.
Childeric III. 315.
Chiliarchs, or *Colonels*, 53.
Chineſe have tithings, 278.
Choul Gul. 64 n.
Chriſtianity, (Laws of true,) when handled in the *Tourn*, 59, 60, 61, 62.
Church, *a by-law* to repair a church binds only thoſe who aſſent, 226 n.
Church (primitive) prohibited *regal influence* in *epiſcopal elections*, 316.
Cities. All the people of the *cities*, *towns*, and *boroughs*, obliged to ſhew their *arms*, 208, and to keep *watch* and *ward* in *rotation*, 209. and to be *encloſed* and *fortified*, and trained to *arms*, 210. and to maintain *due proceſs of the law*, 211–213. Account of the *rulers of cities* in the *Iſraelitiſh* commonwealth, 216 n. to 219. — in old time were *boroughs*, 254 n. and have their right of voting as ſuch, 253. How great *cities* and towns may be divided into *wards*, *tithings*, &c. 367 to 370. See alſo *London*.
Civil Death. See *Penalties* againſt *bribery* at *elections*, 46 n.
Cloths (makers of) forbid out of great towns, 125, 126, 128, 129 n.

Cloth-

Cloth-Sellers, 126-128.
Cloths, 126, 128, 131 n.
Coke (Sir Edw.) his 2d inſtitute quoted, 13 n. 34. his account of the mode of juſtice in the *Hundred* and *Tithing* courts, 59, 60. his account of eccleſiaſtical cauſes being removed from the ſaid courts, 70, 71. — On the word burgh, 247.
Colman, 355 n.
Columba, 358 n.
Common Law, effectual to find *remedies* for all immoralities and nuiſances, 82 to 88, 116, 117, 185.
Companies. That for the better repreſſing of *Thieves*, &c. it was an antient legal ordinance, that all freeborn men ſhould caſt themſelves into *companies*, 17.
Common Land, cottages built thereon allowed three acres of land each, 143 n. *Gardens*, *Orchards*, or *Ponds*, allowed to be made thereon if not exceeding two acres, 143 n. if not joined to neighbouring *freehold land*, ibid. *Land Owners* the leaſt entitled to indulgence on *Commons*, 143 n. 265, 266. All inhabitants rich and poor ſhould have an *equal right*, 265.
Concordate between the *Pope* and King of *France* againſt the antient rights of epiſcopal elections, 336.
Congé-d'Elire. See *King's Command*,
Congregational Courts, 54, 55, 57 to 62, 276, 278, 297. had cognizance of *eccleſiaſtical* caſes as well as *civil*, 59 to 62; order of proceeding, enjoined by Chriſt, 57, 58. Order of the caſes to be diſcuſſed, 59 to 61. Cognizance of *Morality* and *Doctrine* removed from thence to the *Biſhop's* conſiſtories, 67, 68, 74 n. 75, 78 n. 81. (See alſo *Biſhop's Election.*) Advantages of reſtoring eccleſiaſtical cauſes to the *Congregational* Courts, 82-88.—Competent to judge of *Immorality* and *Nuiſance*, and to find a *Remedy* without endleſs ſtatutes, 84, 85. Continuance of the *Congregational Courts* provided for by the annual *View of Frankpledge*, 92, 93.
Conſiſtories, 68, 71, 81.
Conſpirators, 132.
Conſtables were *Juſticiaries*, and tried cauſes in the *Tithing* courts, 28, 29. Their power limited by the *Houſeholders*, 29. See *Tithingman*.
Conſtantinople, 328, 333, 334.

Conſtantius (Bp. of Palermo) 308.
Conſulatus, 205 n.
Contempt of the Law, neglect of ſummons might be ſo deemed, 232.
Coroners, 133n. to vindicate the rights of *females*, 134 n.
Corruption (political,) the baneful effects of it, 46 n. 47 n.
Corruption, *violence*, and *impoſition*, the pretended *neceſſity* for admitting them in *Government* confuted, 153 n. to 160 n.
Cottages, 141 n. to have four acres of land, 141 n. Exceptions, 142; builded on *Commons* or waſte grounds, allotted three acres, 143; other enquiries reſpecting *inmates*, if more families than one dwell in a cottage, 143, 144. *Cottage Land* ought to be reſerved in new ſettlements, 265, ſhould not be tenable with *other* land, 265, 289. See alſo *Common Land*.
County Court, aſſembled twice a year, 62. By *Magna Charta* limited not to exceed *from month to month*, 97; fallen into diſuſe, and the cauſe, 105 n. — was a *County Parliament* competent for all public buſineſs within each county, 105 n. Not only *Land-owners*, but *Houſe-holders*, and all *Inhabitants* of a *County*, are to be deemed *Suitors* to the *County Court*, 206 n. Every man that was an *Inhabitant* of the *County* formerly voted in the *County Court*, 244, 252. *Hundreds* are conſtituent parts of the *County*, whereby *Deciners* are *Suitors* to the *County Courts*, 252. (See Government.)
Courts leet, 103, 104. *Articles of Enqueſt* for the *Jurors*, 112 to 147, and 186 to 190. Their power, 225, 226, competent to make *By-laws* for the Common Weal, to erect priſons, or other neceſſary public *Buildings*, *Cauſeways*, *Highways*, and to levy Taxes, to defray the expence within the diſtrict, 225, 226, 227. *Sheriffs*, *Mayors*, *Bailiffs*, and *Hundreders*, may hold *Leets* by the *Common Law*, 226 n. Where a Lord of a Manor hath abuſed or neglected his power of holding *Leets*, the *King* may reſume the *Right* of the Court and the *Profit* by *Nullum Tempus*, 226 n. Lord of *Leet* may diſtreyne for

for *Amerciaments*, and ſell the diſtreſs, 226 n.
Courts, (the antient popular,) maintained *Peace* and *Right* without expence, 54. See *Congregational Courts*, *County Court*, *Hundred Court*, *Tithings*, *Leete*.
Cowel, (Dr.) 14, 15, 21, 24, 31, 32, 99, 107, 125, 139.
Crompton, 100. n. 2d.
Crown, (the rights of the,) to be enquired at the Sheriff's Torn, 134 n. — *Views of Frankpledge*, *ibid*,—and other *Leets*, *ibid*.
Croxall's Scripture-Politics quoted largely, ſetting forth the primitive mode of government among the *Iſraelites*, 216 to 222 n.
Curriers of Leather, 126, 127, 128.
Cuſtoms and *Uſages*, notice to be taken of, *new* ſet up, or *old* withdrawn, 136 n.
Cut-Purſe, 131.
Cyprian, 349 n. 350 n. 351 n.

D.

Dalton, his *Officium vicecomitum* quoted 224.
David, K. of Iſrael, 170 n. 220 n. 222 n.
David, biſhop of Bangor, elected by the clergy and people of Wales, 302, 303.
Davies, a learned writer, 34, 35.
Deacons. See *Ordination*.
Decani, or Deans, (tithingmen,) 26, 27 n. 28.
Deceivableneſs of unrighteouſneſs, 73–79, 311, 312. See alſo *Partiality*.
Deceivers, 132.
Decenary, (decenna,) 8, 15. The forming of the people into *decenaries* ſhould be voluntary, and the free act of every individual, 16. — Should conſiſt of ten men with their families, 21, 248, 249.—Perſons *excepted* from the obligation of being entered in ſome decenary, 14, 32. — All of twelve years of age to be entered, 115 n.
Decenna, — *Frankpledge*, anciently ſo called, 21.
Decenna, *Decennier*, 21, 101, 114 n. 115 n.
Deciners, alias *Deſiners*, alias *Doziners*, (*Decenarii*,) fully explained, 20–28, 31–37, 249.—Were *freeburgeſſes* and *houſeholders*, 28.—Alſo *freeholders* and *freeborges*, though only *renters of houſes by the year*, 40-

40-42, 245-247. Diſtinguiſhed from the *headborough*, or *tithing-man*, 31, 249.—Deciners had a *judicial* capacity in the *tithing-court*, 22, 23, 29. Without any qualification as landholders, 30, 31.—The term *Deciner* miſapplied by Dr. Cowel, 31.—*Deciners* pledge all perſons that are not houſekeepers, 31, 32.

Deciner, or *Houſeholder*, a diſtinction that includes every rank and degree of Perſons that ought to ſend their own *repreſentatives* to *parliament*, 49, 50.—Their number in England and Wales, 52.—Their right of becoming *deciners* is by their being *houſeholders, paying rent per annum*, 253, 254. See alſo *Houſeholder*.

Deciners are ſuitors of the *County Courts*, 252.

Declaration of the people's rights referred to, 73.—Preface to the ſame, 74.

Decuriæ, 205 n.

Decretals. See *Canons*.

Decurio, a *tithingman*, 27, 33, 34.—In the government of antient Rome and of her colonies, 33, 34, 205 n.

Deiſtical notions anſwered about the pretended *neceſſity* to do evil, 153-175 n.

Demons, doctrines of, what, 74 n. 77 n. 78 n. 311.

Denizen, a *Britiſh law-term*. Lord Coke's and Mr. Davies's etymology of the word, 34.—A full explanation of it, 35-37, 250, 251.

Detinue, wrongful, of body or goods, 122.

Devil, 169.—Who are his children, 170 n.

Dice, (falſe,) 132.

Dier cited, 36, 37.

Diſpenſing with laws, (ὁ ἀνομος,) 314, 315, 328, 329, 344. n.

Diſtreſs, outrageous, 125.

Diſturbers of *judgements*, 121.

Divine Nature, a participation of it promiſed to man, 362.

Diuma, firſt Biſhop of *Litchfield*, 358.

Diviſion of the kingdom into tithings, &c. See *Government*.

Doctor and *Student*, a Law Tract, referred to, 83, 84.

Donald Biſhop, 342.

Dozener, 22.

Dozens explained, 14, 15, 21, 22.—Where erroneouſly rendered inſtead of *de douze ans*, 115 n.

Drunkenneſs, to be puniſhed, 140.—A *damnable* vice, 141 n.

Dublin, 303, 338 n.-344 n.

Duelling, encouraged by the indiſcriminate

indiſcriminate practice of the courts of law, 86 n.

Durham, Walter, Biſhop of, murdered, 76 n.

E.

Earldorman, 78 n.

Earls, Barons, &c. not to be included in the ordinary *tithings*, 14.

Eccleſia, 55, 56.

Eccleſiaſtical caſes, antiently were diſcuſſed in the *congregational courts*, 59, 66-68, 70, 75. — Inconveniences of being now ſeparated from them, 81, 82.

Edgar, King, his laws cited, 79 n. — Had the laws of *frankpledge*, 208 n.—Conquered Ireland, 338 n. 343.

Edinburgh, 355 n.

Edward the Confeſſor, his laws, 6-10, 14, 25, 26, 27.—That all men ſhould hold K. Edward's laws, and be in *pledge*, was ordained by *K. William* I. 228-230.

Egbert, K. 357 n.

Election. Right of the people to elect judges and officers, 3 n.—The *rights* of the *Iſraelites* transferred to all other nations that became Chriſtians, 4 n. — and *enlarged* under the Chriſtian diſpenſation, not only to *elect* all *civil* and *military* officers, like the *Iſraelites*, but alſo all *religious* miniſters, whoſe offices, under the *Jewiſh* law, were only hereditary, 5 n. — The church (or *people*) deprived of the right of *electing Biſhops* by the incroachments of Popes, Emperors, and Kings, 55 n. — Aided by the *deceits* of the *monkiſh* clergy, 308-313. See *Monks*.— The right of *electing Biſhops*. See *Biſhops* and *Epiſcopacy*. — The danger of being found enemies to the *King of Righteouſneſs* by oppoſing the *elective rights* of Chriſtian people, 5.—*Decenaries* to be regulated by free *election* in every neighbourhood, 16. — *Elections* ought to be made by perſons *reſiding in the ſame county*, 45.—All *houſeholders*, or *deciners*, ought to *elect* deputies to repreſent them in the national council, 37-41, 49, 50. — The people of England generally *reſtored* to their right of *electing* their own magiſtrates and officers, civil, military, and eccleſiaſtical,

Baſtical, in the reign of Henry I. 93 n. 299.— Every man, an inhabitant of a county, formerly voted at *county elections*, 244, 255. The *repreſentation* of the people of England would be perfectly *equal* if every 2000 houſeholders elected 1 repreſentative, 50, 51, 53.— How riots and obſtructions at *elections* may eaſily be prevented, 147, 148.—Preſent corruptions and diſorders at *elections*, 178, 180. — To whom theſe evils are to be attributed, 181. — Who are the moſt guilty part of the *mob* at *elections*, 181, 182. — The preſent hopeleſs method of determining diſputed *elections*, 182, 183.—No ſuch evils when *elections* were *every ſeſſion*, 183.— Additional *articles of inqueſt* propoſed againſt bribery and corruption at *elections*, 186–189.—*Elections* ought to be for *every ſeſſion*, 183. — How this *conſtitutional* frequency of *elections* would occaſion no inconvenience, 189.— Mayors, ſheriffs, and other magiſtrates, conſtables, &c. ought to be *freely elected*, every year, by *all* the inhabitants, 267. *Prieſts* as well as *Biſhops* formerly elected by the people, 310. — Right of *election* both to *civil*, *military*, and *eccleſiaſtical*, offices reſtored to the people in the time of K. Henry I. 299. — Right of *election* ineſtimable, 333. — A *Congregation* has the right of *electing* a *Reader*, or *Lector*, 350 n.

Electus. The abuſe of that term in the Pope's uſurped appointment of *Biſhops*, 308.

Eleutherius, 199 n.

Elizabeth, Queen, 17.

Encroachment on the King, 118, 118 n. — *Encroachment*, *private* or *purpreſture*, 119.

Encroachment, common or public, on *Roads*, *Streets*, *Rivers*, *Waters*, *Woods*, *Bounds*, &c. 118 n. 119.

Engineers Corps, 193.

Enqueſt, or *Enquiry*, articles of, 112–147.—Additional articles propoſed againſt *bribery* at *elections*, 186–189. — Of *Watch* and *Ward*, 190. See alſo *Juries*.

Epheſus, the people of, while under the Roman government, retained the power of holding popular aſſemblies, *elected by themſelves*, 55, 56, 276.

Epiphanius, 75.

Epiſcopacy,

Epiſcopacy, 62, 69. — When the Pagan title *Pontifex* was firſt ſubſtituted for *Epiſcopus*, the proper title for a Chriſtian *Biſhop*, 65 n. — The true Chriſtian *Epiſcopacy* continually weakened by the uſurpations of the Church of *Rome*, 62, 63, 308; — firſt, by taking away the right of the people to *elect their own Biſhops*, 63 n. 67 n. — and afterwards by a forged ſtatute, which removes the cognizance of eccleſiaſtical caſes (Errors in *Morality*, or Doctrine) from the popular courts to the *Biſhops Conſiſtories*, 70, *et ſeq.* — The lawful authority of the true Chriſtian *Epiſcopacy* would be increaſed by the reſtoration of the *congregational Courts*, and of the people's right to *elect* their own *Biſhops*, 87, 88, 89, 297, &c. — Scriptural precautions touching ſuch *Elections*, 88, 89, 320, 321. — Unjuſt proceedings of the Council of *Laodicea*, endeavouring, by *deceit* and *fraud*, to pervert *epiſcopal Elections*. 309, 310; — alſo of the *Monkiſh* Prelates at the 2d Council of Arles, 311, 312, — and at the 2d and 3d Councils of Orleans, 313, — and by *Pope Zacharias*, 315. — Perverſions of the Council of *Laodicea* prove that the *Biſhops* and *Prieſts* were antiently *elected* by the people, 310. — Royal interference in *epiſcopal Elections* prohibited by the 3d Council of Paris, 313, 316, 318, — and by the *primitive Church*, 316, — and by the antient *Canons*, (called apoſtolical,) 77 n. 317, 318. — *Epiſcopacy* has no neceſſary connexion with *Monarchy*, 318. — The *Biſhops*, in a Lateran Council, aſſert the people's right to *elect*, 321, — and even the *Popes* themſelves in ſome inſtances, *ibid.* and 327, 328, 329. — *Primitive Precautions* in *epiſcopal Elections*, 88, 89, — would obviate the objections of *Popes* and *Monks* to popular *Elections*, 320, 321. — Council of Conſtantinople declares againſt the popular right, 328. — Want of *impartiality* in thoſe who have treated on the rights of *epiſcopal Elections*, as well as on the ſide of *Epiſcopalians* as of the oppoſite party, 337–351. — Every *Biſhop* is a *Preſbyter*, though every *Preſbyter* is not a *Biſhop*, 337. — The arguments

arguments of lord chancellor King in favour of the *preſbyterian* notions of *epiſcopacy* fullyconſidered, 345 n. to 352 n. ſee *preſbyterians*. *Free election* the moſt prudent introduction to the *rite* of *conſecration*, but no part of the *rite* itſelf, 348 to 351. the *rite* explained, 352-365. *Tertullian*'s evidence of biſhops in the primitive church, 352 n. *epiſcopacy* no invention of *popiſh* times, 353 n. ſettled in *Britain* long before, 354 n. *Old biſhops* the firſt oppoſers to *popiſh* miſſionaries, 355 n. popes could never compaſs their ends but by the deſtruction of *epiſcopal* power, &c. 356n. 357 n. 358 n. of the ancient *epiſcopacy* of *Scotland*, 358 n. 359 n. See alſo *Barcelona*, *Biſhops*, *Concordate*, *Congregational Courts*, *France*, *Pontifex*, *Pontif*, *Popes*, *Tarracina*.

Equality, ſee *people*, *repreſentation*, *parliamentary repreſentation*.

Equitable repreſentation, a tract, 45, 252.

Eſcapes of felons, to be enquired of, 125 n.

Eſcheates, not to be alienated, 134 n.

Eſſoignes, for abſence, 113, when *excuſable* to be allowed, 146, 147. *eſſoigners* warrants, 147 n. ſee alſo *amerciaments*, 231.

Eſtimatio capitis, 237.

Eſtrayes, 118.

Evil, reſiſtance to it a chriſtian duty, 156 n. the "*not hating evil*" is part of the character of an *abandoned man*, 162 n.

Euſebius, 346, 347.

Exception or *exemption*, none allowed for appearance at view of *frankpledge*, and why, 145 n.

Exchequer, judges of, their antient name, 61 n. See *Red Book*.

Exiles, 117.

Excommunication, the power of it, not wanted by the *biſhops* of a reformed church for undue purpoſes, 81. therefore rendered almoſt uſeleſs by being ſeparated from the *congregational courts*, 81.

F.

Fairs, not to be held except in *fortified* places where *watch* and *ward* and *judgement* (by frankpledge) is maintained, 210 to 213.

Fanda or *Funda*, 307.
Faſciculus temporum, 325 n.
Fee, 113, 114.
Fells (or pells) 128.
Fief, or manour, 113, 114.
Finan, biſhop, 358 n.
Finch's Nomotechnia, 206 n.
Fines, ſee *amerciaments*.
Firmillian, 351 n. (ſee *Preſbyterians*.
Fiſcalis (res) 134, 135 n.
Fleta, 94, 95, 106, 114, 115, 116, 118, 119, 120, 124, 125, 128, 130, 131, 132, 134, 135, 136, 138, 144, 190.
Florence, 305.
Folkmotes, 16, for the free *election* of *heretoches* or lord-lieutenants and *ſheriffs* of counties, 197 n. remarks on that law of K. Edward, which expreſsly mentions the right of the folkmotes to elect them, 198 n.
Forfeit, 7 n. 8, 9, ſee alſo *amerciaments*. *Forfeiture of life*, by hanging, too ſevere for the generality of the crimes now deemed *capital*, which were not ſo frequent when puniſhed only by *pecuniary mulcts*, 237 to 240.
Forgery, a fictitious charter, pretended to be of king William I. produced in the 2d of Rich. II. by the *popiſh biſhops* to remove eccleſiaſtical cauſes to their own conſiſtories, 70 to 82. The abominable *lie* and *deceit* by which this was effected, a mark of the *apoſtacy* and prevalence of *ſatan*, 71 to 75.
Foreſtallment, 122, 127.
Fortifications, *earth-works*, &c. may be eaſily formed by *rotation of ſervice*, 279 and 280.
Framers of falſe judgements, 121.
France (kings of) claimed the nomination of *biſhops* in the 9th century, contrary to the juſtice of their predeceſſors, 335, 336. In this they do not exerciſe a *droit* but a *tort*, 336.
Francis I. king of France, 336.
Frankpledge, or *free-pledge*, and *fri-borg*, explained, 6, 8 to 26, 33, 36, 37, 99, 106, derived from the *Romans*, or *Lombards*, 105. No exception allowed, 113.— Invented in favour of peace, 145 n. All men to hold the laws of K. Edw. 228; and all *freemen* to be in *pledge*, ordained by K. William I. 229, 230. Cuſtom of *frankpledge* was conſidered as exiſting in law ſo lately as the 5th of K. James I. 206 2d n. 207 n. The *Anglo-Saxon government*, deſcribed, 208 n. to 274 n. Perſons exempted therefrom, 108, 248. *Enqueſt*

queſt whether all the *frankpledges* have their *dozeins* entire, 114. Utility of *frankpledge* in keeping the people in perfect order and effecting a complete reformation in *legal proceedings*, *elections*, and *morality*, 147 to 151, 236, 277.—Is the conſtitutional remedy for *immorality* and parliamentary *corruption*, 185, 255.—was the *law* found by K. Arthur, 200n. to 206n.—ordained by K. William I. 228 to 230. The *common law* hath ſtill ample power to revive it, 235, 236, 247, 248. Sir Edward Coke's obſervations on *frankpledge*, 236 to 240. All men, having the *knowledge of good and evil*, are capable of this government, 278. No man entitled to *liberty* that is not duly *pledged*, 279. Ancient courts of *frankpledge* held by lord mayor's precept in London, 368. See alſo *Companies*, *Decenary*, *Decenna*, *Deciners*, *View of Frankpledge*, *Viſus franciplegii*.

Franks, 113 n.

Freeborough-head, or *tithingman*, 9, 25.

Freeholders, not only *landowners* were ſo called, but alſo *liberi tenentes* in *burgage tenure*, viz. the *houſeholders* or *deciners* as well as *land owners*, 197n. 245. They elected *coroners* and *ſheriffs*, ibid. *Freeborges*, or *freeburgeſſes*, were equally free, 146. See *folkmotes*.

Freeborghes, or *freepledges*, 7 n. 8, 25, 33, 36, 37, 51, 246 to 249, 253. The 10 houſeholders only, who pledge each other, are *freeborghes*, 248,—were *deciners*, 249.—ought all to have votes for repreſentatives in *parliament*, 259.

Friborgus, or *friborgum*, 7n. 24, 25.

Funda, 307.

G.

Galfridus Monmuthenſis, 201n.

Gaols, ſee *jails*.

Garba, ſee *ſheaf*.

Geeſe, (ſtealers of,) 131 n.

Gelaſius, pope, 65 n.

Genſeric, 66 n.

Gildas, 354 n.

Girls, ſee *women*.

Glove-maker, 128.

Good and *evil*, knowledge of, 51, 84.

Government, by diviſions of the people into *hundreds* and *tithings*, ſaid to be firſt generally eſtabliſhed in *England* by K. *Alfred*, in imitation of the *government* eſtabliſhed by *Moſes*,

in

in the commonwealth of *Iſrael*, by the advice of *Jethro*, 3, 4, 6,—but was the *law* in *Britain* in the time of K. *Arthur*, 200 to 208 n. and of K. Edgar, 208n.—conſiſtent with the moſt perfect ſtate of liberty, 5, yet competent to every purpoſe of good government, 6. *Plan of aſſociation on conſtitutional principles*, &c. 268 n. to 274n. Utility of reſtoring the *true tithing*, 6, 7, 11, 12, 17, 82, 243, &c. obſolete in time of Queen Eliz. yet required then by the common law, 17, 18. Great utility thereof deſcribed in old writers, 19, 20. Deſcription of it in the laws of K. Edward the confeſſor, 6–10. All men required to hold theſe *free laws* of K. Edward, and to be "*in pledge*," alſo to be *armed* and *trained* by a ſtatute of K. William I. which alſo ſubmits the efficient power of the kingdom, the *national militia*, to the orders of *parliament*; whereby it appears that the *Engliſh* were free under K. William I. notwithſtanding what is called the *conqueſt*, 198 to 204 228 and 229. The legality of levying *taxes*, to make good the damages done in the riots in 1780, founded on this proviſion of the *common law*, 11. This diviſion of the people moſt apt to prevent *robberies*, *riots*, &c. 12, 236, 255. This farther proved from *Brompton* and *Speed*, 18–20 255, and from Lambard, 237, and from K. Edward's laws, 238 to 240. Gradations of public officers & magiſtrates, as they would ſubſiſt under ſuch a government, 52, 53, 258. More advantages reſulting from this mode of government, 54, 268, 274, 278, would aſcertain the rights of all electors, and obviate all objections againſt a *parliamentary reform*, 150 This mode of government uſed in Britain in the time of the Romans, 204, 205, &c. Means of completely reſtoring both the *civil* and *military government*, 255. objections anſwered, 367–370. The *deiſtical* doctrine concerning government, that *corruption*, *violence*, and *impoſition*, are *neceſſary*, fully confuted, 153 n. to 175 n.

Graviones, judges of the exchequer, 61 n.

Gregory I. (pope) 63, 67, 68, 306, 308. See *popes*.

Gregory, an Iriſh Abbot, elected Biſhop of *Dublin* by *King*, *Clergy*, and *People*, i.e. an *Iriſh Parliament*, 303. See alſo 338 n. to 345 n.

H.

Hammond (Dr.) 350-353.
Hæretics, 66 n.
Hands, (the laying on of *hands in Ordination*,) 316n. 347 n. 348 n. 352.—*Socinians* objections thereto conſidered, 353 to 365.
Hawkins, his remarks on *Juries*, 29.
Headborough, (*Capitalis Friborgus* or *Tithingman*,)—Etymology of the title, 9, 25; a Judge, or *Juſticiarius*, in the Tithing Court, 22, to 24. See alſo *Freeborough*, *Freeborghes*, *Tithingman*. —Enqueſt whether they have their Doziens entire, 114, — elected by the people, 196,— diſtinguiſhed from the *Deciners*, 249.
Heathen Nations, 55.
Henry I. (King,) 93 n. 299.
Henry II. (King) 92 n. 298, 343 n.
Heretochii elected by the people, 196,—were the ſame that are now called *Lord Lieutenants*, or *Deputy Lieutenants*, 197.
Heruli, 66 n.
Herycourt's Analyſe quoted, 333, 334, 335.
Hierome, 351 n.
High Conſtables were *Juſticiaries*, 28. See *Hundreders*.
Highways, 118 n. 119.
Hiſtorical Account of the *Expedition* againſt the *Ohio* Indians, &c. with a method of forming frontier ſettlements, &c. quoted, 285-287, 289, 290.
Holy Spirit, the ſupreme principle of action in man, 155, 362. *Extraordinary Gifts* thereof, 354 to 365. The danger of neglecting to pray for the *Holy Spirit*, 357. The teſt thereof, 361. Imparted to all that duly aſk, 361, 362, 363. Solemn prayer for his guidance with "*laying on of hands*," are the eſſential rites of *Ordination*, 316 351. Theſe ſolemn rites defended from the cavils of the *Socinians*, 353 to 365. Gift of *God's Spirit* is always an *extraordinary Gift*, 361 to 365.

Homicide, 116 n. See alſo *Manſlaughter* and *Murder*.
Horne's Mirrour of Juſtice, 106, 107, quoted with notes and obſervations thereon, 107, 123, 126.
Horne, (the Little Horn) is a Biſhop, & *Pontifex Maximus*, 307.
Hotoman, 106.
Houſe-breakers, 117 n. *Houſe-breaking* how prevented, 255. See *Burglary*.
Houſe-burners, 116 n.
Houſeholds, 21.
Houſeholders, or *Houſekeepers*, or *Heads of Families*, 20, 21, 31. *Renters of Houſes*, 248, have ſometimes been called *Freeholders* and *Liberi tenentes*, in contradiſtinction to *Tenants at Will*, 245, 246. *Juries* to be choſen from the *Houſeholders* of the vicinage, 29, 30.—Have a judicial capacity, 22, 23, 29, 30. The computed number of them in England and Wales, 49, 258.—Ought to elect *Repreſentatives* in *Parliament*, 49, 50 to 53, 253, 255,—are *Suitors* to the *County Courts*, 206 2d n, —The beſt means of reſtoring all *Houſeholders* to their right of voting, 255. See alſo *Deciners*, *Landholders*, *Freeoborges*.
Houſes, number of, in *England* and *Wales*, 47 to 53.
Hoveden, Roger, 207 n.
Howard, John, Eſq. 227 n. See *Jails*.
Howel's Synopſis Canonum, 77 2d n. 312 n.
Hue and *Cry*, 116 n. 117, 117 n. 224.
Hundred. Every *Hundred* families had a complete eſtabliſhment of *civil officers*, 28. When *Eccleſiaſtical Cauſes* and queſtions reſpecting *Morality* and *Doctrine* were withdrawn from the *Hundred Court* by a *forged Charter*, 68-72,—Conſiſts of ten companies of ten men and their families, 100 n. — *Hundred Court* to be held every 3 weeks, 100 n.—*Articles* for the *Jurors*, 112, 113 to 147, and 186 to 190.—The *Hundreds* are conſtituent parts of the county, 251.
Hundreders, or *high Conſtables*, are *Juſticiarii*, or *Juſtices*, 28. — Number of them in England and Wales, 49, 53. — Their duty to call *Views of Frankpledge* once every year, 107, 108, 111.—*Elected* by the people, 196.
Hye, Iſle of, 358 n.

I.

Jails, (breakers of,) 132 n. — A *Gaol*, or place of confinement, ought to be in each town and borough, for which the authority of a *Court Leet* is ſufficient, 225. —Expences of ditto to be levied by the *Court Leet*, *ibid.*— *Gaols*, *Houſes of Correction*, and of *Induſtry*, ought to be erected in leſſer diſtricts to prevent accumulation of priſoners, and to prevent the ſelling *Convicts* into *foreign ſlavery*, or into torture in *floating priſons*, 226 n. — *Convicts* according to the common Law ought to be puniſhed *only* in the diſtrict where they committed the offence, *(ibid)* where the *Leets* have authority to prolong and regulate their impriſonment for their reformation, 227 n. — Mr. Howard's labours afford ample materials for the moſt effectual means of forming ſuch eſtabliſhments, *ibid.*

Japan, 370.

Japoneſe had Tithings, 278 n.

Idolatry. Thoſe who pray before *Images* cannot evade the charge, 167 n.

Jehoiada, High Prieſt, 221 n.

Jeremiah, 218 n. 219 n.

Jerome, (ſee *Hierome*,) 351 n.

Jethro, his council to Moſes, 3 n. 216 n.

Jews, formerly permitted to practiſe uſury when Chriſtians were forbidden to do ſo, 118. See alſo *Iſrael*.

Immoralities may be remedied by the *Common Law*, 82–88, 116, 117.

Impannel of Jurors, 113.

Impriſonment for want of *Pledge*, 99, 101 n.

Impriſonment againſt law, 116 n. 122. — Of perſons impriſoned, and let go without *bail*, 123, 124.

Ina, King. Correction of a miſtake that he was elected "*per angelum*" inſtead of "*per Angliam*," 202 n.

Independents, 346.

Indulgence, (papal,) againſt *Law* and *Right*, (ὁ ανομος,) 314, 315, 317, 319, 329, 331, 334.

Infallibility. See Popes John VIII. and IX.

Inhabitants of a *County* are ſuitors

ſuitors to the *County Court*, 206 2d n.

Iniquity. The ſyſtem of it in *Government*, and its baneful conſequences, 159 n. 160 n.

Innovations, in matters of ſtate, to be rejected, 243.

Inqueſts. See *Enqueſts*.

Inſpiration, (holy,) *Miracles* not the only teſt thereof, 361. See *Holy Spirit*.

Integrity, maxim of government reſpecting it, 168 n.

Joan, Pope, the ſtory of her vindicated, 324 n.-326 n.

Joaſh, 221.

John VIII. (Pope,) 324 n.-325 n.

John IX. (Pope,) 324, — was "the 6th Pope who had the *name of Sanctity without the thing*," 325 n. 327, 328. See *Infallibility*.

John 8th. Archbiſhop of Ravenna, 321.

Irijah, 218.

Ireland. Examples of the right of the Clergy and *People* of *Dublin*, *Waterford*, and *Limerick*, (*Norman Colonies*,) electing their own *Biſhops*, and ſending them to England to be conſecrated by the *Archbiſhop* of *Canterbury* in preference to the Archbiſhop of *Ardmagh* and other *Iriſh* Biſhops, 338-344 n.—Liberties of the Church there not affected by K. *Edgar's* conqueſt, 343 n.—The wicked invaſion of *Ireland* by K. Henry II. under a *papal Commiſſion*, to ſubdue the *Church* of *Ireland* to *papal* tribute, 343 n. 344 n.—Popes *indulged* King Henry in the plenitude of *lawleſs* power, (ὁ ἀνομος,) 344 n. — *Uſurping Popes* the moſt cruel enemies to the rights of the people of *Ireland*, 344 n. 345 n.

Iſrael. The ancient right of the Iſraelites to *elect Judges* and *Officers* both *civil* and *military*, 3 n. 55,—but not their miniſters of religion, whoſe offices were hereditary, 3 n. — All nations that become Chriſtian are engrafted on the *Iſraelitiſh* olive-tree, and entitled to the name and all the privileges of *Iſrael*, 4. n. —all but the *Jews* themſelves, who have long been broken off and diſperſed like *dead branches*, as a monumental proof of the Scripture-teſtimonies againſt them, 5 n —Their privileges of electing Judges and Officers enlarged under the Chriſtian diſpenſation, 5 n.—A more particular deſcription

tion of their free *Government* under the *Theocracy*, 213-222, 257, 276, 277. —Wanted the happy inſtitution of *Juries*, 212-215. See alſo *Croxall's Scripture-Politics*, 216-222 n. and *Judges* and *Officers*.

Italia Sacra, 304, 305, 326, 327.

Judas, (Maccabæus,) 221 n.

Judges and *Officers*. Right of the people to elect them, 3 n.-5 n. 55. — People themſelves are *Judges* in the uſage of *Juries*, 281.

Judgement. The right of the people to *judge* and determine each others controverſies, 54-62, — and *eccleſiaſtical Caſes*, as well as Θιωτικα, wordly matters, 58, 59.

Judgements. Diſturbers of framing lawful *Judgements*, and the framers of wrongful *judgements*, to be enquired after, 121.

Judgements, (falſe,) to be enquired of, 122.

Julius Cæſar, 63 n.

Julius II. (Pope,) 326 n.

Juries, 29.—An act in their favour quoted, *ibid.* — Mr. Hawkins's Remarks on *petit* and *grand Juries*, 30.—*Enqueſts*; how to be made by them, 109-112. —*Juries*, *packed*, to be enquired of, 123. —The happy Conſtitution of *Juries*, which we enjoy, ſeemed to be wanted even in the *Commonwealth of Iſrael*, 213-215. — The number of jurymen that may be *challenged*, 214, 281. See alſo *Jurors*.

Jurors. If ſuſpected of perjury, by concealing offences, inqueſt of the truth to be made by another *Jury*, the firſt *Jurors* to be *amerced*, but not *attainted*, 137-142. —Subject to the *Challenge* of the parties, 281.

Jury, 9, 10, 29, 30. — A Parliament elected in the manner of a *Jury*, 199 2d n.—How many *Jurymen* may be rejected on a *Challenge*, 214. — The want of a *Jury* in the caſe of *Naboth*, 215.

Juſticiaries have ample power of *Law* and *Right*, but are limited with reſpect to *Tort*, or *Wrong*, 149. See *Hundreders* and *Tithingmen*, or *Headboroughs*.

Juſtice, (national,) may reſiſt unto blood, 156, 157 n.

K.

Krebs, 224 n.

Kings command over the *Militia* ſtrictly limited by Parliament, 195, 196 n. 229 n. — *King's Lieutenant*, or Governeſs of his appointment, muſt have only a *limited* delegation of authority, 274. — *Kings* (and *Popes*) manifeſt their *Will* and *Pleaſure* againſt *Right*, 312 n. — *Royal mandates* in *epiſcopal Elections* prohibited, 313. — Guarded againſt by the *primitive Church*, 316, 317, 333. — *Royal Mandates*, *Letters miſſive* with *Congé d'Elire*, not founded in *right*, 318.

King's Day, what, 115 n. 145 n.

King, encroachments on, 118.

King's Officers, wrongs by them, 119.

King, (Lord Chancellor,) his argument in favour of *Preſbyterian ordination* anſwered, 345–353.

Kitchen concerning Courts Leets, 105, 106.

Knowledge of *Good and Evil*, 51. — Duty of Chriſtians to be exerciſed therein, 84. — All men having this *Knowledge* are capable of government by *Frankpledge*, 278.

L.

Labourers, how to be increaſed and maintained, 288, 289.

Lambard (Author of *Archonomia* and *Duty of Conſtables, &c.*) quoted, 3, 6, 7, 13, 16, 17, 18, 25, 26, 33, 99, 198, 207, 279. — His explanation of *Tithings*, 6, 13, — and of the Cuſtoms of the *Decenary*, 99 n.–101 n. 225. — Concerning *Courts Leet*, or *Trithings*, 104. — Concerning the antient rotation of *Watch* and *Ward*, 194, 222, 223, 224.

Land. The *Monopoly* of it ſhould be prevented, 264, 289. — Land ſhould be reſerved (in laying out new ſettlements) for ſchools and religious inſtruction, 265, — and for *Cottage-Land* and *common Land*, *ibid.* 287. — An Eſtate, laid out in ſmall farms, with

with a *Tithing*-village in the centre of it, would ſupply *Labourers*, and be moſt beneficial, 288. — *Commons* and *Waſte Foreſts*, or Chaces, might be laid out and occupied by the neighbouring poor to reduce the *Pariſh-Rates*, 288.— *Pariſh-Lots* ſhould not be held by perſons who occupy other *Land*, 289.

Landholder, a qualification *not* neceſſary to conſtitute the *judicial* capacity of *Houſeholders*, or *Deciners*, 30. (See *Land.*) — The *Rights* which *Landholders* now enjoy were equally the rights of the *Houſeholders* or *Freeburgers*, 252.

Lanfranck, Abp of Canterbury, 338, 340.

Laodicea, (Council of,) excluded the people's right of *electing Biſhops* and *Prieſts*, 309, 310.

Larcenies, (ſmall,) 130.

Law, the grounds of it, 82–88, (ſee *Maxims*,) — favours *Religion*, 87. See *Common Law*, *Diſpenſing with Law*.

Laws enforced, in the antient popular Courts, *without Expence*, for the maintenance of *Peace* and *Right*, 54.— *Laws of true Chriſtianity* handled in the *Tourn*, 61, — and other *Congregational Courts*, 62 n. — The *Common Law* WILL FIND A REMEDY competent to any evil complained of, let it be never ſo new or uncommon, 84, 85, 116.—The multitude of *Laws*, and not the want of *Laws*, impedes the courſe of *Juſtice*, 85 n.—All the *Statute-Laws* compriſed in a ſmall manual for many ages, 103 n. — Laws formerly enforced by *Fines* in proportion to the wealth of the offender, 86, 87, 233–234, 235.

Laws of K. Edward, 6–10, 14, 197, 238, — reviſed in the 4th of William I. 199 n.—Mr. *Prynne's* objections againſt an ancient MS copy of them anſwered, as alſo thoſe of *Abp Uſher*, 198, 199, 200 n. — The variations in the two copies juſtified, 207 n.—Farther enforced by William I. 229, 230. —Cited, 232, 233n. 238n.

Law of Nature referred to, 155, 277.

Law of Retribution referred to, 5 n. — for the mode and popular right of *epiſcopal Elections*, 88, 89.

Laying on of Hands, 352–365.

Leadenhall, 127.

Leather, 126, 127. See *Curriers.*

Lector, a reader in the Church, not a clerical office, but *ſub Clero*, 349 n.—Elected by the Congregation, 350 n.

Leeds, 127.

Leet explained, 103–106. See alſo *Courts Leet*, *Sheriffs*. — *Leet Juries* to be charged with the *Rights of the Crown*, 135 n. — All who hold *Courts Leet* have power to re-eſtabliſh *Frankpledge*, 147.

Leete has power to *levy Taxes* for defraying all neceſſary public works, 225,—and to make "*By lawes* for the *Commonweale*," 225 n.

Legal Means of political Reformation referred to, 183.

Leo X. (Pope,) 336.

Letters miſſive. See *King's Command.*

Lewis the Good. See *Ludovicus Pius.*

Lewis II. (Emperor,) commends the *free Election* of a Biſhop, 330, 331 n.

Lex Murdrorum, one of *K. Edward's Laws*, containtaining the regular proceſs in caſes of *Murder*, 238, 239 n.

Lex Parliamentaria quoted, 93, 298, 299, &c.

Liberi Tenentes. Mere *renters of houſes* were ſometimes ſo called, 40, 255.

Liberty. The glorious ſtate of political liberty eſtabliſhed in *Iſrael* would have been maintained, had the people perſevered in God's Laws, 4 n. — Men that forſake God loſe their *Liberty*, *ibid.*—The inſtitution of government by *Tithings* conſiſtent with the moſt perfect ſtate of *Liberty*, 5.—Conſtitutional ſecurities for Liberty ordained by K. William I. that all perſons ſhould hold the *Laws* of *K. Edward*, 228,— which law required that *every Man*, willing to be deemed a *Freeman*, ſhall be *in Pledge*, 230.—That *all* free men, of the whole kingdom, ſhould have *Arms*, and be ready prepared (i. e. *exerciſed*) for the King's ſervice, 194–204,—but the *Command* of this univerſal *Militia* was veſted in the *Common Council*, or *Parliament*, 196, 229 n. —*Cities* and *Towns* not to hold *Markets* and *Fairs* unleſs encloſed, fortified, and watched by the armed inhabitants, 210–212, 229, — and to maintain *Juogement* and *Juſtice*, 211, 212, 213. — *Watch* and *Ward*,

Ward to be performed by *Rotation* by all the inhabitants, 220 to 224,—all regulations of *Watch* and *Ward*, and of "*the King's entire service*," to be provided by *Common Council*, or *Parliament*, 229 n.—No man entitled to *Liberty* that is not duly *pledged* by his neighbours, 279.

Lie, the mark of *Apostacy*, 71 n. 74.

Lieutenants, Lord, or *Deputy Lieutenants* of the *County Militia*, elected by the people, 196, 197. See *Heretachii*.

Limerick, 338.

Lindisfarn, 358 n.

Litchfield, 358 n.

Littleton, 38, 39, 40, 253, 254 n.

London, 354 n.—Of the antient *Wards*, *Divisions*, and *Government*, thereof, 367 to 369.—The removal of the *Gates* has exposed the *City* to sudden *Riots*, and confluence of unknown *Multitudes* in cases of fire, &c. 369, 370.

Lord's Supper, 355, 363.

Lot, to decide in the appointment of *Bishops* after *free Election* of two unexceptionable *Presbyters*, 89 n. 90, 91, 320.

Lucius, K. 199 n.

Ludovicus Pius nobly asserted the people's right to *elect Bishops*, 319, 320.

M.

Magistrates ought to be *elected* every year in new settlements, 267.

Magna Charta, 87, 94, 95, 96.—Limitation of *Amerciaments*, therein explained, 234, 235.—The foundation of *Magna Charta*, 299.

Malchus, elected Bishop of Waterford, 342 n.

Malden, 34.

Maim, 116. See *Wound*.

Mainprize, or *Bail*, 124.

Malum in se never *lawful* or *necessary*, 161 n.

Mandates Royal, (See *King's Command*.)

Mangey (Rev. Dr.) 89, 90, 310, 335, 336,

Mangey, (Rev. Mr. John), 90 n.

Manners, effectual means of regulating them, 43.

Manour, 113,—'Where any 'Lord abuses or neglects his power of holding *Court Leets*, the *King* may resume

reſume the *Right* and the *Profit* of the Court by the limited doctrine of *Nullum Tempus*, 226 n.

Manſlaughter and *Murder* diſtinguiſhed, 237 n.—The latter not paſſed over, in antient times, for *pecuniary Mulcts*, but deemed *boteleſs*, or unpardonable, ibid. 237 n. to 239 n.

Marianus Scotus, 316 n.

Markets and *Fairs*, not to be held but in places *encloſed* and *fortified*, 210 to 213.

Marriage,—forbidding it a *doctrine of dæmons*, 74 n. 77 n. 78 n.

Marriage may be promoted by puniſhing whoredom and vindicating the rights of *Women*, 133 n.

Marriage Act very injurious to the rights of poor ſeduced females, 133 n. (See alſo *Canons*.)

Married Biſhops oppoſed by the *Pontiffs*, 67 n.—Antient *canons* ordained that *Biſhop*, *Prieſt*, or *Deacon*, ſhould *not* put away his wife, 77 n. to 79 n.—Later *Canons* the contrary, ibid.

Martin, 324 n. 325 n. 326 n.

Matthew Paris, 76 n.

Matthew of Weſtminſter, 201.

Mauricius, 66 n.

Maxims, or *Grounds*, of Law, 82 to 87, 160, 161–163, 168. (See *Neceſſity*.)

Mayor. See *Court Leet*.

Meaſures, *Weights*, &c. 120, 121.

Meats, 77 n.

Mezeray, 304.

Micaiah, 218.

Milan, 326, 328.

Militia, 193 n. 194 n. (See *Arms*, *Rotation*, *Watch* and *Ward*.)—*Militia* duty, though called "*entire ſervice to the King*," was ſtrictly limited; the "*King's command*" being ſubmitted to the orders of *Parliament*, 195, 196. and the people *elected* all the officers, 196, 197.—*Militia Duty* in *cities* and *towns*, 219 to 224.—Employed in aiding the *Sheriff* and his *Bailiff*, 224 n.—*Military* capacity of every man required to ſupport the *civil* government, 224 n. See alſo *Cities*, *Liberty*.

Miracles are not the only teſt of holy inſpiration, 361.—When to be ſuſpected of *Deluſion*, 361.

Miſrepreſentation of the Commons, 42.

Mobs, who are the moſt guilty part of a *Mob* at *Elections*, 181, 182.

Money, clippers and forgers of it, 136 n.

Monks, 67 n. 74 n. 77 n.—falſely called *regular* (inſtead of the *regular* parochial

chial prieſthood,) 80. — The inſtruments employed in ſapping the *rights* of the clergy and people, 309 to 313.—promoted the *Doctrines of Demons*, 311.—their *deceitful* innovation to ſap the *right* of the people in *electing Biſhops*, 311, 312, 313, 318, 319, 331, 334.—not able for ſeveral years to ſet aſide the juſt conſtitutions of *Charles the Great* and *Lewis the Good*, 321.
Monopoly of Land ſhould be prevented, 264, 289. (See *Land.*)
Mortal (ſinners,) 117.
Moſes, 3.
Mulcts, 235. (See *Amerciaments.*)—*Pecuniary Mulcts* not levied in caſes of *Murder* in lieu of perſonal puniſhment, as commonly ſuppoſed, 237 n. to 239 n. (See *Offences Capital.*)
Murchertag, King in Ireland, 342 n.
Murders to be enquired after, 116, 118 n.—not to be expiated but by the blood of the *Murderer*, 156, 157 n. 237 n. to 239 n. 280.—*Murder* was *boteleſs* or *inexpiable* by the laws of *K. Canute*, 239 n. (See alſo *Lex Murdrorum*, *Manſlaughter.*)

N.

Naame, 122. (See *Withernam.*)
Naboth, 215.
Neceſſity, (political,) a falſe plea for *Iniquity*, 156, 157, 158 n.-The *maxims* which favour the plea of *Neceſſity*, 160.—how limited in law; that they extend only to *mala prohibita*, and not to *mala in ſe*, and cannot juſtify the pretence of *State Neceſſity* againſt the common rules of *Honeſty* and *Morality*; and that the *neceſſity* of doing *Righteouſneſs* is *the higheſt neceſſity*, which ought to ſuperſede every other *Neceſſity* in directing all our meaſures, both public and private, 158, 160 to 171.—State *Neceſſity* how limited, 161 n.
Negro, 46, 49 n.
Newgate, 240.
Nicholas I. (Pope,) 321, 322, 330.
Non-reſiſtance (doctrine of) conſidered, 156 n. 157 n.
Normans, colonies of them in *Ireland*, who *elected* their

own Biſhops and ſent them to England to be conſecrated, 338 n. to 344 n.
Northumbrians converted, 358 n.
Novation, (ſee Preſbyterians,) 347 n. 348 n.
Nullum Tempus occurrit Regi, the legal doctrine thereof, 134 n. 135 n.— effectual to authoriſe the *King* to reſume the rights and profits of *Courts Leet*, where Lords of *Manors* have abuſed their power, 226 n.
Nuiſances, the common law effectual to find *remedies* for all of them, 82 to 88, 116, 117.
——— of walls, houſes, hedges, &c. raiſed, or beat down, 119 n.
——— of bounds removed, 120.
Numerical Diviſions of the people, advantages of them, 43.

O.

Oaths of *allegiance*, at what age to be taken, 114, 115 n. 145, 146.
Obedience to *chief-pledge* enjoined, 145.
Odeatinus, 67.
Odoacer, 65 n. 66 n. 306 n.
Offences, *capital*, more frequent ſince puniſhed by *death* than when only *pecuniary mulcts* were in uſe, 237 to 240.
Offenders reſtrained by *frank-pledge*, 148, 149.
Ohio, hiſtorical account of the expedition againſt the *Ohio* Indians, &c. 285.
Omiſſions of *juſtice* and *right* puniſhed in the caſes of *Amnon*, *Abſalom*, and *David*, &c. 170 n. 171 n.
Oppreſſion of the poor, GOD's vengeance againſt it, 190 n.
Ordination, the due diſtinction between the *ordination* of *preſbyters* and *biſhops*, 316 n. 345 n. Anſwer to lord chancellor *King*'s arguments on this head, 345 n. to 353 n. The rite of *ordination* is "*all one*" for *deacons*, *preſbyters*, and *biſhops*, differing only in *deſignation*, 347 n. but that *deſignation* and the *repetition* of the *rite* occaſions an eſſential difference in the *orders*, 348 n. 352. The *Socinians* objection to the rite conſidered, 353 to 365. The efficacy of *prayer* therein, 364.
Orfgyld explained, 231, 232.

Orleans, 313.
Origen, 346 n. (See *preſbyterians.*)
Oſwald laws, 357 n.
Outlaws, 117.

P.

Palermo, 308.
Papacy, the ſeverity of the expreſſions in this book againſt it is aimed only at the *iniquity* and *errors* of it, and not againſt the *individuals* who hold that profeſſion, (74 n.) for whom the author declares his chriſtian charity, 75 n. The period and puniſhment of the *papal* power approaches, ibid.
Papal power, (*Jacques*,) enemy to *law* and *right*, 314, 315, 317, 324 to 329, 344 n.
Paris, (*Matthew*,) 300, 301.
Paris (3d council of) aſſerts the people's right to *elect biſhops*, 313, 314. and prohibits *regal influence* in elections, 316, 318. Pope *Zacharias diſpenſed* with this juſt law and *indulged* K. Pepin to break it, 315.
Pariſh lots for free labourers, 288, 289.
Parliament, anciently called the "*common council*," 229 n.
Parliamentary repreſentation, defects thereof, or *miſrepreſentation*, cannot be remedied but by reverting to firſt principles, 243. Danger of *innovations*, ib. *Repreſentation* of *every man* not adviſeable, becauſe not the *uſage*, 244, Every man that was an inhabitant of a county, formerly voted for *knights*, 244. Voting reſtrained to *freeholders*, 8 Hen. VI. 245. by allowing all the *decimers* in every *county* to vote, (that is, every *houſeholder.*) A *repreſentation* of the people perfectly *equal* would be obtained, 43, 252 to 256, 259. Two divinons, of a 1000 *decimers* each, ought to ſend one repreſentative to parliament, and allow him *wages* for his attendance, 44, 50, 257. The contrary practice of *voters receiving money* for travelling expences, is repugnant to the ſpirit of the conſtitution, 45, 46. The antient parliaments not ſo numerous as the preſent, 50, 51. An inſtance of 12 *repreſentatives* elected for each county, after the manner of a *jury*, 199 2d n. 208 n. Inconveniences of the modern uſage of applying to *parliament* for building *priſons*, *bridges*, &c. for which the *county courts*

courts and *leets* are competent, 225 to 227. Frequent but ſhort ſeſſions of *newly elected parliaments* would root up corruption, 227. The king's command over the *militia* was only by the *parliament*, 195, 196, 229 n. This ordained by K. William I. (ſubmitting the efficient power of the kingdom to the orders of *parliament*) proves that the *Engliſh* were not enſlaved by the *conqueſt*, 229n. One means of reducing the diſproportion of *parliamentary repreſentation*, 252. Bad effects of that diſproportion 252, 253. How the *repreſentation* may be rendered *perfectly equal*, 256 to 259. Of the antiquity of the *houſeof commons*, 300. The aſſent of *parliament* once neceſſary for the *election* or *confirmation* of biſhops, 301, 302, 303, 304, 341n. The *commons* about the year 1120 were a conſtituent part of the *Engliſh*, *Scottiſh*, *Welch*, and *Iriſh*, *parliaments*, 303. (See alſo *Elections*, *Bribery*, *Lex Parliamentaria*.)

Parliamentary reformation, objections againſt it anſwered, 150 to 185. (See "*Thoughts on a Parliamentary reform.*")

Partiality. Under a pretence to prevent *partiality* was introduced the *moſt partial* corruption in *epiſcopal elections*, 67 n.—How guarded againſt, in our law, by the privilege of *challenging* jurymen, 214. (See *Deceivableneſs of unrighteouſneſs*.)

Paſſive obedience and *non-reſiſtance* explained, 156n.

Paths, ſtopped or contracted, 119 n.

Patrick, elected biſhop of Dublin, 341 n.

Pavia or *Papia*, 326 to 329, 331.

Paul (St.) 56, 171n to 175n.

Peace, breaches of it, 116.

Peers and *great men* exempt from the obligation of entering into *tithings* or *frankpledge*, 14, 99, 248.

Pelagius (pope) 66 n. 314 n.

Peleg or *Phalec*, 66 n.

People. Their right to *elect judges* and *officers* under the Moſaical diſpenſation, 3. enlarged under the Chriſtian diſpenſation, to the choice of ſpiritual officers and miniſters, 5. Their claſſes in numerical diviſions, 53. Their right to *popular aſſemblies*, 58.—may be effectually reſtrained from offences by *frankpledge*, 147 to 151. The numerical diviſions of *frankpledge* equally regu-

lar and effectnal, whether a country be more or leſs *populous*, 158.
Pepin, (King) *indulged againſt law* by the Pope (ὁ ανομος) to nominate *Biſhops*, 315, 317, 319.—his ſon and grandſon, being more honourable, reſcue the popular right of *electing Biſhops* from the uſurpations of the *Monkiſh Clergy*, 319. (See *Charles the Great*, *Ludovicus Pius*.)
Petrarque, 326 n.
Petty Larceny, 130.
Pick-Pockets. 131 n.
Plan of Aſſociation, &c. 268, See *Government*.
Plan for the government of an infant ſettlement on the coaſt of *Africa*, 263 to 281.
Plan for the reduction of our military eſtabliſhment, (192 n.) from which the *engineers* and *artillery* regiment are, however, propoſed to be exempt, 193 n.
Plan for laying out *Settlements* of uncultivated *lands*, and for the *government* of the *Settlers*, 285 to 294.
Platina quoted, 66n. 67n. 324 n. 326 n. 329, 330, 331.
Play. See *Wound*.
Pledge (Chief) Capitalis Plegius et Capitalis Friborgus, 114 and 114 n. 145, 249. (See *Frankpledge*.)
Political expediency conſidered, 157–172 n. (See *Time-ſervers*.)
Political Slavery, the loweſt degree of it, 184, 185.
Ponticus Verumnius, 201 n.
Pontifex, a title foreign to the Church of Chriſt, 65 n. When ſubſtituted for *Epiſcopus*, 65n. 305 2d. n. Difference between theſe two words, 65 n. 305 2d.n. —*Pontifex Maximus* being a *Pagan* title, (1ſt to the chief of the idolatrous *Augurs* at *Rome*, and, 2dly, to the *Roman Emperors*, 63, 64,) is the *Head* that was *wounded to death by the ſword*, 63, 305 2d.n. —Its Etymology, 64 and 65.—cannot be applicable to any office or dignity in the church of *Chriſt*, 65 n. —is the *little horn*, 305 n. 306, 307, —adored and *deified* by the people, as were the *bloody Emperors*, which aſſumed his function, and afterwards the *Popes*, who were equally *bloody*, 65 n.—The title aſſumed by *Pope Gelaſius* about 20 years after the *Roman Emperors* loſt it, 65 n.—At what time the mark of the *Beaſt*, (viz. unlimited power of acting *according to his will*, viz. "*placuiſſet Pontifici*,") was apparent, 67 n. 306 to

to 309. By *Imperious Language*, the *Pont. Max.* manifeſted the character of the *little Horn*, 307.

Pontificatus only a modern expreſſion for *Epiſcopatus*, 305 n.

Pontiffs, Pagan, why ſo called, 63, 64.

Popery inimical to true Chriſtian *Epiſcopacy*, 5 n. 63 n. 67 n. 70, 306 to 312, 314, 344 n. 353 n. 357.

Popes. Their uſurpation of the rights of Clergy and people in *Epiſcopal Elections*, 306 to 310, 330. *Pope Gregory* I. 63, 68, —his taunt to the Greek Emperor *Mauritius*, 67, —his tyranny over the *Italian Biſhops*, ibid. Inſtance of his interference in the *election* of a *Biſhop* at *Rimini*, with the extraordinary conſequences of it, 67, 68,—his uſurpation over the church of *Tarracina*, 306 to 309. —*Pope Zacharias indulged K. Pepin, againſt law*, to nominate Biſhops, 315, 317, 319. *Pope Niccolas* I. concurred with a *lateran* council to reſtore the *elective* rights of the Clergy and People of *Æmilia*, in order to humble his rival the *Biſhop* of *Ravenna*, 321 to 323. *Pope* John VIII. or rather IX. againſt all probability of *right*, ſubmitted the Archbiſhops of *Ravenna* and *Milan* to the juriſdiction of the Biſhops of *Papia*, 323 to 326. *Pope* John IX. in a council at *Papia*, grants the privilege to the *clergy* and people of *Papia* to *elect* their own *Biſhop*, 327 : this ſeems to have been done to diſplay his aſſumed power of *diſpenſing with laws*, 329. The ſtory of *Pope John* VIII. being an *Engliſh woman*, vindicated on the authority of many antient *popiſh writers* of good repute, 324 n. to 326 n. The *Concordate* between the *Pope* and King of *France*, 336. — *Popes Indulgence* to King *Henry* II. to invade *Ireland*, 343 n. 344 n.— The *Popes* have been the moſt cruel enemies to the rights of the people of *Ireland*, 344 n.—and the conſtant enemies to the rights of *Epiſcopacy*, 5 n. 62, 63, 63 n. 67 n. 70, 368, 309 to 312, 353 n. to 357 n. (See *Church of Rome*, — *Idolatry*, — *Pontifex Maximus*, — *Roman Church*, — *Papacy*,— *Biſhops of Rome.*)

Powel's "Treatiſe of the Antiquity, &c." of courts leet," 129 n. 225, 226 n.

Prayer, the efficacy of it for divine gifts, 155 n. 357 n. 361 to 365. (See alſo *Holy Spirit.*)

Preſbyters, the due diſtinction between them and *Biſhops* proved from the 3d laying on of *hands*, and the deſignation, 316 n. 345 to 353.—*Monks* put in their places by the *papal* power, 357 n. (See alſo *Ordination*, *Chancellor*, *King*, *Prieſts.*)

Preſbyterians. The arguments of Lord Chancellor King in favour of the *Preſbyterian* Doctrine, that Preſbyters are *Biſhops*, fully conſidered, 345 n. to 352 n. — *Origen* ordained a *Preſbyter* by the hands of *Biſhops*, yet no *Biſhop* himſelf, 346 n. 347 n.—alſo *Novation*, ordained a *Preſbyter*, and afterwards, by a farther *ordination*, obtained *epiſcopal* dignity, 347 n.—Though the *rite* of *Ordination* in the 3 orders is *all one*, (347n) yet the *Deſignation* and the *Repetition* of the *Rite* occaſion an eſſential difference in the *Orders*, 348 n.

Preſbyterian pretenſions to the right of *ordaining*, as drawn from the example of *Cyprian*, without foundation, 350 n.—and from the teſtimony of *Firmillian*, 351 n.

Preſentments of Jurors to be ſealed with their ſeals, 132.

Price (Dr.) his obſervations on the population of England and Wales, 49, 258 n.

Prieſts, as well as *Biſhops*, formerly *elected by the people*, 310 (See *Preſbyters*, *Ordination.*)

Principles of action in man, what the moſt noble and ſupreme, 155 n.

Privileged Places, 137, 138.

Probus et legalis, 8.

Proceſs of the Law muſt be carried on in the King's name, 272, 273.

Prophecy, 65 n.

Proteſt of a private Perſon cited againſt the dangerous doctrine of "*political neceſſity*," "*ſuſpenſions of Law*," &c. 161 n.

Providence (God's) vindicated from the *Deiſtical* notions of an eminent writer, that the "*Creator has conſtituted a world upon one plan, and a religion for it on another*," 153 n. to 175 n.

Prynne, 100 2d n. 198,—his doubts

doubts concerning the antiquity of the Hundred Courts anſwered, 203, 204.

Puniſhments. — Crimes abounded leſs before ſo many *capital Puniſhments* were ordained, 236 to 240.

Purpreſture, 118, 118 n. 119, 120, 120 n. See *Encroachment*.

"*Purpriſe upon the King*," what it is, 118 n.

R.

Radalphus, biſhop of the Orcades, 298.

Radalphus Ceſtrenſis, 201 n. archbiſhop of Canterbury, 339n.

Ralph, biſhop of Rocheſter, 302.

Ranulph, biſhop of Durham, 300, 301.

Rape, 132 n. 133 n. 134 n. unpardonable, 280.

Ravenna, 321, 325, 327, 328.

Reader. See *Lector*, 349 n.

Rebellion againſt *God*, what it is, 161.

Reccaredus Rex Tarragoniæ, 90 n.

Receivers of perſons not in *aſſiſe*, 114, 115n.

Receivers of *felons*, 116 n. 117 n. *Receivers* of *Exiles*, *Outlaws*, *Waives*, 117, of *ſtolen goods*, 131.

Red book of the *Exchequer*, 59, 71, 72.

Redeemers of *robbery*, 131 n.

Regal influence, (ſee *king's command*,) in *epiſcopal elections*, foreſeen and guarded againſt by the *primitive church*, 316, 317, 318. Indulged by the *popes*, 315, 317, 319.

Religion particularly favoured by the common law, 87.

Reliquiæ Spelmannianæ quoted, 75 n.

Remedies may be found in the common law for all immoralities and *nuiſances*, 82 to 88, 116, 117, 132, (ſee article 34, and in *frankpledge*, 185,—againſt *robbery* and *violence*, 190.

Renting of a *houſe* per ann. the legal deſcription of *burgage tenure*, whereby ſuch mere *renters* or *houſeholders* were anciently deemed *freeholders*, 37 to 43, 245, 246. and, as *houſeholders*, were incorporated in aſſociations of 10 each and called *deciners*, 249. *Houſeholders* are ſuitors

tors to the *county court*, (206, 2d n.) and ought to *elect representatives* in *parliament*, 49 to 53, 253, 254.

Repetition. See *Ordination*.

Repetition of crimes, whether or not to be puniſhed by doubling the *were* or *mulct*, 234, 235.

Replevies, wrongful, 123. when lawful, 124 n. Executed by the ſheriff's bailiff with 300 militia men, 224 n.

Repreſentation of the injuſtice of tolerating ſlavery, an extract from it relative to bribery at elections, 46 n.—49 n.

Repreſentation of the people, how to be rendered *perfectly equal*, 43, 51 to 53, 243, 252, and 256.—once a jury of 12 from each county, 199, 2d n. See alſo *Parliamentary Repreſentation*.

Reprobacy, character of, 162, 2d n.

Reſcues, wrongful, 125.

Res Fiſcalis, 135 n. (See *Nullum Tempus*.)

Reſidence, (See *Elections*,) none but *reſidents* ought to vote, 45.

Reſiſtance, when lawful, 156 n.

Reſpect of perſons, 109 n.

Richard II. 70.

Right. (See *people* and *election*) The *neceſſity* of doing *right* the higheſt *neceſſity*, 161. and at all times *neceſſary*, 163 n. 166 n. 168 n. *right right*, or *perfect right*, required in law and politics, 169 n. 178.

Righteouſneſs. The only plan of *government* which is conſiſtent with religion, peace, and ſafety, 168 n.—hath no fellowſhip with *illegality* nor *Belial*, 169 2d n. 170 2d n.

Rimini, 67 n. 68 n.

Riot tax, 11.

Riots, the city of London expoſed to riots and the confluence of unknown *multitudes*, by removing the gates, 369, 370.

Rite, 348 n. *rites (outward)* 353 to 365. (See *Ordination*, *Baptiſm*.)

Rivers. The banks ſhould be deemed common or public as the river itſelf, 292.

Roads. Court of *frankpledge* to guard againſt the obſtructing and narrowing or ſtopping up *roads*, *ſtreets*, *rivers*, &c. 118 n. 119 n.

Robbery, the true means of preventing it, 19, 20, 190, 255. (See *Redeemers* of *robbery*, *Remedies*.)

Rocheſter, 302.

Rollo, 338.

Rollwink (Wernerus) 325 n.

Romans, the government of their ancient colonies was by numerical diviſions of *Decenaries*,

Decenaries, Centuries, &c. 33, 34, 35, 45, 204 n. 205 n. 278 n.

Roman Beaſt, 55, 63 n. 65 n. 75 n. 305 n. 306 n. See *Beaſt*.

Roman Church. The popiſh perverſion of *Chriſt's* command, "*Tell unto the Church*," 58, 59, 62 n. —Warning *to come out of her*, 75 n —The prophetical marks of her *Apoſtacy* were evident about the middle of the 6th century, whereby the 1260 years of Tyranny, veſted in the power of 11 crowned horns, are known to be nearly completed, 75 n. [See *Apoſtacy, Abbot, Apology of the Author for Severity, Beaſt, Britain, Biſhops of Rome, Blindneſs, (judicial,) Demons, Forgery, Horn, (the little,) Idolatry, Marriage, Monks, Papacy, Partiality, Pontiffs, Pontifex Maximus, Wound, (deadly,) healed.*]

Roman Deputies. Courts of Juſtice under them at Epheſus, 55.

Roman Emperors uſurped the title of *Pontifex Maximus*, 63 n. 305 n. — Imperial Head wounded to death, 63 n.— The *deadly Wound healed*, 63 n. 65 n. 306 n. — When the *Biſhops* of *Rome* aſſumed the prophetical character of the *little Horn*, 307.

Romulus, 205 2d n.

Rotation, or *Roſter* of *Militia Service*, 194, 195, 209, 210, 213, 220–224, 229 n.—All public works may be formed and maintained by *Rotation* of *Service*, 279, 280. — Defaulters ſhould be puniſhed with a double ſhare of the burthen, 280.

S.

Sadler's Rights of the Kingdom, 92 n. 298, 301.

Sadler, trade of, 128.

Salmon's hiſtorical Collections, 353 n.

Saracens, mentioned in an old MS copy of King Edward's Laws inſtead of *Scanians*, 201 n. 203 n.

Satan, 64, 72, 73 n.—His children, miniſters, and ſervants, who they are, 169 n. 170 n. See *Devil*.

Saul, 222 n.

Scanians, 201 n. 203 n.

Scotland. Of the antient Biſhops of *Scotland* and the Weſtern

Weſtern Iſles, 358 n. 359 n.

Scriptures, holy. The puniſhment of thoſe that neglect them, 72. — Abound with "*Enſamples written for our Admonition*," 171 n.—Occurrences therein, cited by a celebrated Writer as being "*of no Importance at all*," proved to be *highly important*, 171 n.-175 n. — Given by inſpiration of God, 172 n.— Proved to be ſo in the very ſamples cited as of *no Importance*, 173 n.

Scriptures, holy. Texts referred to throughout the Work.

Gen. ix. 6. 156, 157
Exod. xviii. 25. 216
Numb. xxxv. 33. 156, 157
Deut. i. 9. 17. — 3
—— xvi. 18. 3, 217
—— xvi. 20. 169
—— xxix. 10. 217
—— xxxi. 28. 217
Joſhua xxiii. 2. 218
I. Sam. xiii. 12. 224
—— xviii. 13. 224
II. Sam. xviii. 1. 224
II. Kings, i. 9, 11, 13. 221
—— xi. 4. 221
I. Chron. xii. 1, 14, 20 220
—— xiii. 1. 221
—— xxviii. 1. 218, 221
II. Chron. i. 2. 218
—— xxv. 5. 224
II. Chron. xxix. 20. 218
Pſa. xviii. 27. 109
— xxxvi. — 162
— xxxvii. 37. 168
— xciv. 20. 73
— cvi. 3 — 163
— cxi. 12. 109
Prov. xiv. 34. 168
—— xvi. 12. 168
—— xxii. 8. 161
Jer. xxxvi. 2. 219
—— xxxvii. 12 219
Ezek. i. 16. 149
—— x. 12. 150
—— xviii. 29, 30 165
—— xxii. 6-15. 165, 166
—— xxxiii. 17-29. 166
Dan. vii. 8. 307
Mic. v. 2. — 219
I. Mac. iii. 55. 221
Matth. ii. 5. 219
—— vii. 7. 357
—— xviii. 15-17 57
Luke xi. 9-13 357
John iv. 24. 356
—— viii. 44. 73
—— xiv. 30. 74
Acts i. 15-26. 89
—— v. 3. — 73
—— xix. 37-39 56, 276
—— xxvii. 10. 173
Rom. iii. 8. 161
—— xii. 2. 154
I. Cor. ii. 6. 154
—— v. 9, 10. 141
—— vi. 1-6 58, 276
—— vii. 5 — 77
—— x. 2. 171
II. Cor. vi. 14, 15. 73, 169
Gal. v. 21. 141

Philip

Philip. i. 27. 168
Col. iii. 25. 109
II. Theſſ. ii. 3-12. 72
I. Tim. iii. 2. 88
——— iv. 1-5 74, 78
II. Tim. iii. 2-9 154
——— iii. 16. 172
——— iv. 3. 174
Titus i. 7. 88
Heb. v. 14. 84
Jam. iv. 4. 154
II. Pet. i. 3, 4. 362
I. John ii. 21. 73
——— iii. 7, 10. 163, 170
Rev. xii. 9. — 170
—— xviii. 4, 5. 75
—— xxii. 15. 74

Securitas, (ſumma et maxima,) 6, 236.

Sedes Stercoraria, 326 n.

Seducers of Wives and Nuns, &c. 132 n. 133 n. See *Women*.

Selden, Mr. 78 n. —Authorities cited by him in proof of his teſtimony, 79 n.

Senators, 53.

Serfs, from *Servi*, Slaves, 109 n. 110 n. 113 n. —The author's ſucceſsful exertions to prevent the engrafting *Weſt-India Slavery* on the rotten ſtock of *Villinage*, 110 n.

Settlements, a plan for laying them out, 285-294. See alſo *Africa*.

Sheriff, 69 n. 71, 76 n. 78 n. 79 n.—Ought to be *amerced* for neglecting to hold the *View of Frankpledge*, 96, 97. — Not to keep his *Tourn* in the *Hundred* but *twice* in the year, 97.—To "*ſeek no Occaſions*," and be content with ſo much as he was wont to have for *View-making*, 98.—His fees would need regulation, 99. —To take the Oaths of young men of 14 years of age, and ſee them combined in ſome Dozen, 102.—*Leets* derived from the *Sheriff's Turn*, 106 n. — Their *wrongful Views* (or *packed Juries*) to be enquired of, 123 n. — Preſentments to be made to their firſt *Turn* of what the *Leet* cannot redreſs, and the *Sheriff* to preſent to the *Exchequer*, 134. — The *Rights of the Crown* to be enquired at the *Sheriff's Torn*, 134 n. — Has power to revive *Frankpledge*, 147. — *Viſcounts*, or *Sheriffs*, *elected* by the people, 196, 197 n.—Was formerly called *Vice-conſul*, 205 n.—May hold *Leets* by the Common Law, 226 n. See alſo *Court Leets* and *Election*.

Sheringham, 278.

Shire, 62 n. 78 n. See *County Court*.

Shoemaker, 128.
Sigebert, his chronicle, 325 n.
Silvianus, elected Bp of *Tarracina* by *Clergy* and *People*, 306.
Simeoni Gabriel, 64, 2d note.
Sinners. See "*Mortal Sinners*," 117.
Slavery, civil and political, nearly connected with *Slavery to Senſuality*, 49.—To be prohibited in the propoſed African Settlement, 263. — What is the loweſt degree of *political Slavery*, 185.
Smeathman, Mr. See *Africa*.
Socinians. Their objection to *laying on of Hands in Ordination* conſidered, 353–365.
Somner, 232 n.
Sorcery, 118 n. (" *de ſortilegis* ")
Southwark, Borough of, 41. —*Renters of Houſes* therein ſtill retain the ancient rights of *Burgage-Tenure*, 254.
Speed, 20.
Spelman, (Sir Henry,) 75 n. 77 n.
Spirit. See *Holy Spirit*.
Spirits, ſeducing apparitions of, 79 n.
Standing Army, 74 n.—The moſt dangerous and unconſtitutional of all our modern innovations, 191. —The means of gradually decreaſing it without injury to the Officers and Men, 192 n. 193 n.
State, (*Neceſſity* of.) See *Neceſſity*.
Statutes, inconvenience of the monſtrous increaſe of them, 85. — All the *Statutes* printed in a ſmall *Manual*, 103 2d n.—Moſt deſirable to be reduced again to the ſame ſize, 103 2d n.
Statutes referred to.
3 Edward I. c. 11.—124.
13 Edward I. —222.
21 Edward I.—29.
18 Edward II.—102, 103, 116–119 n. 121 n. 124–126, 130, 132, 134, 136, 138.
Leg. Gul. Regis, for the maintenance of Watch and Ward, 194, 228–232.
9 Henry III. c. 35,—97.
44 Edward III.—226.
1 Henry V. c. 1,—45.
8 Henry VI. c. 14,—245.
3 & 4 Edward VI. c. 3, 5, 6,—143.
31 Elizabeth, c. 7,—144.
7 William III. c. 4,—48, 182, 186–188.
2 George II. c. 24,—46, 186.
Statutes, falſe, 102 n. 103.
Stephens, (Hen.) 325 n.

Summons to *Hundred* and *County Courts*, the fines for neglecting them, 230–235.—To be made 7 days before these Courts, 232. See also *Essoignes*, *Amerciaments*.
Sureties for the Peace or for *Bail*, 123 n. 124.

T.

Tailor. See *Clothes*.
Tamer, 170 n.
Tanners, 128.
Tarracina. Bishops were elected there in the 5th century by *Clergy* and *People*, 304, 305.—But, in the next century, were appointed "*ex Imperio*" by the arbitrary mandate of the *Pope*, 306–308.
Tarragonia, 90 n.
Tertullian quoted, 352 n.
Theocracy, 213.
Theias, 66 n.
Theodoric, 66 n.
Thief-boot, 131, 131 n.
Thieves, 116 n. 117 n.—Enquiry of those who go in message for them, 136 n.
Thieves and *Robbers*. The effectual means of suppressing them, 17.
"*Thoughts on a parliamentary Reform*." Some account of this Work, 151, 152, — with a refutation of some of its ironical assertions and arguments, 152–185.— Strictures on another Tract, by the same Author, touching supposed contradictions between *Religion* and *Politics*, 153 n. 175 n. — The celebrated Author of this work corrected in his *deistical* as well as *political* notions, 151–186.
Thousand, (Court of the,) 43. — Two such Courts the proper number to *elect* one *Representative* in the national Council, 44, 50, 53, 257,— which would not be an innovation, 258, 259. — The *Thousands of Judah*, 219 n.— *Captains of Thousands* in *Israel*, 220 n.–222 n.
Tienmannatala. See *Freeborges*.
Time-Servers, deistical, answered, 158;—who vote for every *evil* measure and oppose every *good* one. Inculcating *evil* by precepts of *political Necessity* are *reprobate*, 162 n.
Tithings. (See *Government*.) Of what *Tithings* consist, 12,

12, 13. Derivation of the word, 95.—Required by *Magna Charta* to be maintained entire, 94 to 98. —No new Act of Parliament neceſſary to reeſtabliſh *Tithings*, 96, 105 n. 147. — No man to dwell in the realm if not in ſome *Tithing*, 111, 228 to 230.— The power of the *Sheriffs* and other *Magiſtrates* is competent to the immediate revival of the antient *Tithing-courts*, 96, 147. — Each *Tithing* is a *Wheel* within a *wheel*, 149, 216 n.

Tithing Court, open to all, 23.

Tithingman, a Judge, or *Juſticiarius*, in the *Tithing Court*, where he tried cauſes, 23 to 27.—Number of them in *England* and *Wales*, 53.--Enqueſt whether they have their Doziens entire, 114.

Toll takers, outrageous, 132.

Tottillas, 66 n.

Tourn, 60, 70, 71.

Towns to be *fortified* and *watched*, or not to hold *Fairs*, 210-213, — *Fortifications* and *works* to be performed by *Rotation* of ſervice, 279, 280.—Mode of laying out a *Town* for a frontier ſettlement, 286 to 294,—a *Tithing Town*, or *Village*, 287, 288.—How to divide great towns and cities into *Tithings*, &c. and concerning the antient *Wards*, *Diviſions*, and *Government*, *of London*, 367 to 369.

Tracts on *Crown Law*, and *Paſſive obedience*, 156 n. 239 n.

Tract on the doctrine of *Nullum Tempus*, 226 n.

Tracts on the means of national defence by a free Militia, 194 n. &c. &c,

Trade, the exerciſing of *two trades*, how far forbid, 127, 128, 129 n. 131 n. See *Markets*.

Traytors, 118 n.

Treaſure trove, 118.

Trial of Right, 9.

Trithemius, (Abbé,) 326 n.

Trithing, 54,—is mentioned in *Magna Charta* inſtead of *Tithing*, 94, 95, 98,--is above the *Wappentac*, or *Hundred Court*, being 3 or 4 *Hundreds* joined together. 104 n.,—is the 3d part of a province, 104 n. 258.—*Articles of Inqueſt* for *Jurors*, 112 to 147, 186 to 190.

Tumults (probability of,) the ſtale pretence of *Popes*, &c. againſt *free elections*, 332, 333.

Twiſden's Hiſt. Ang. relative to the formation of *hundreds* and *decenaries* by K. *Alfred*, 19, 20.

V.

V.

Vagrants, 102 n.
Valentine, St. elected Biſhop of Tarracina, by *Clergy* and *People*, 304.
Valentinian III. 63n. 306 n.
Van-Dale, (*Anthouy*,) 65 n.
Vandals, 66 n.
Venue. See "*Viſus Franciplegii*," *Views*, and *View of Frankpledge*.
Ughell, (Ferdinand,) Abbot of St. Vincent, 61 n.
Vicar of Satan, 64 n.
View of Frankpledge, to complete the *Decenaries*. 93, 94, 96, 97, 106, 107,—to be held at Michaelmas, 97, 98,—once every year, 108.—What perſons are exempted, 108 and 248.—All other perſons to attend the *View*, 147.—*Articles* then to be enquired into by the *Jurors*, 112, 132, 147.—*Articles* propoſed to be added, 185, 186 to 190.—No exception allowed for not appearing, 145, 147.—*Eſſoignes*, 113, when allowed, 146.—*Enqueſt* whether all the Frankpledges have their *dozens* entire, 114.—Whether all of 12 years of age attended the *View* and have taken the oaths, 114, 115 n.
Views, (or *Venues*,) *torceous*, 123 n.
Village, the mode of laying out a *Tithing Village*, 287, 288.
Villeins, 109.
Villenage, fraudulent means of promoting this oppreſſion, 102 n. 103 n.—The revival of it in England prevented by the *Author*, 110 n.
Violence, *Corruption*, and *Impoſition*, 153 n. 155 n. 157 n. 158 n. 159 n. 165 n.—Every *Government* managed on ſuch principles is a branch of *Satan*'s dominion, 170 h.
Violence, how prevented, 19, 20.—*Remedy* for every ſpecies of it, 190, 255.
Viſcounts, (*Vicecomites*,) formerly *Viceconſules*, 205. See *Sheriffs*.
Viſus Franciplegii no ſtatute, 102 n.—Not the *Venue*, but the *View of Frankpledge*, 107, 123 n.
Unnatural Crimes not to be pardoned, 280.
Volatteranus, (Raphael,) 326 n.
Voters ought not to be allowed *travelling expences*, 45, 46.
Uſages. See *Cuſtoms*.

Uſher,

Uſher, (A.Bp.) 198, 199 n. *Uſurers*, 118 n. 338 n. 344 n.

W.

Wages. See *Parliamentary Repreſentation*.
Waives, 117, 118.
Walls built up or beat down to *nuiſance*, 119, 120.
Wanton perſons who make falſe *alarms* to be enquired after, 117 n.
Wapentake, 54,—is the *Hundred Court*, 104. — explained, 104, 2d note. (See alſo *Government*.)
War, when juſtifiable, 156 n.
Watch and *Ward*, articles of enquiry to be made if *Watches* are not duly kept, 190.—To be kept *in Gyrum*, i.e. by *Rotation*, 193–195, 209 and 229 n. — *All the freemen* of the whole kingdom to have *Arms*, &c. 200 to 229,— and be ready for the King's *entire ſervice*, 195, 229.—*King's command* over them *only* by the *Parliament*, 196, 229 n.—*People elected* all the officers, 196, 197 n.—All *Market-towns* to be encloſed, fortified and *watched*, 210 to 212, and the *rotation* of ſervice to be regularly circulated, 213, 219, 220. — *Nightwatches* to be in every *City* and *Borough*, 222. 223.—*Watch* to raiſe *Hue* and *Cry*, if their arreſt is not obeyed, 244.—Compared with that of the Iſraelites, 213 to 222. (See alſo *Arms*, *Liberty*, *Militia*, *Government*, *Rotation*.)
Waterford, 338 n. 342 n.
Waters turned, ſtopped, &c. 120 n.
Ways, (*public*,) encroachment on, by land or *water*, 119 n.
Weights falſe, to be enquired of, 120 n. 121 n.
Were explained, 232 n. 233 n. 234.
Weſtminſter, 41. — Shameful *Election-Riots* there, 179.—to be attributed to the oppoſers of *Parliamentary Reformation*, 180, 181, 182. —and to the want of the antient *Seſſional Elections* 183. Mere *Renters of Houſes* therein, (and in many other *Cities* and *Boroughs*,) ſtill retain the rights of *Burgage Tenure*, 254.
Weſtminſter Primer, 124 n.
Wheels within Wheels, 216n.
Whelock, 199 n.

Whoredom, the facility of it a hindrance to *Marriage*, 133 n.
Wilfrid, 355 n.
Wilkins, (Rev. David,) 199.
William I. 70, 194 to 196, 198, 199 n. 207 n. 211, 220, 228, 229.
William II. 301.
Wine, 129.
Withernam, 122 n.
Women. *Enqueſts* not to be made by them, 109,—but may be *witneſſes*, 109 n. —Married *Women exempted*, but not exclnded, from attending the view of *Frankpledge*, 109 n.—All *Girls* above 12 years of age are enjoined to appear at the annual view of *Frankpledge*, 146 n. — Their *Raviſhers* and *Seducers* to be puniſhed, 132 n. 133 n. — *Rapes* to be *preſented* before the *Coroner*, 133 n.—Every laſcivious affront, or impudent incivility, to *Women* to be puniſhed, 133.—The juſt rights of modeſt *women* to be vindicated, in order to promote *honorable marriage*, which is hindered by *whoredom*, 133 n.—*Seducer*, of helpleſs *Girls* ſhould be compelled to *marry* them, ibid. —Cruelty of laying all the ill conſequences of temptation on the weaker veſſel, 133 n.
Wound, (the prophetic *deadly wound*) healed, 63 n. 65 n. 68 n. 306 n.
Wounds, enqueſt thereof, 116. —The term *Play* falſely rendered *Fray*, ibid.
Weecks, 118.
Wrong, Deiſtical notions concerning the prevalence of *wrong* in the world, and the *imaginary neceſſity* of yielding to it anſwered, 153 to 170, 178.

Y.

York, 354 n.
Youths deſired to attend the view of Frankpledge, 146

Z.

Z.

Zacharias, (Pope,) 315, 317, 319, 335.
Zedekiah, K. 219 n.
Zenobius elected Archbishop of *Florence* by the Clergy and People, 305.

THE END.

MVSEVM BRITAN NICVM

ERRATUM in p. 161, 2d line,

for *occasions, exceeds*—
read *occasions, which exceeds*—